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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 57

RAILROAD COMMISSION OF TEXAS AND LON A. SMITH, ERNEST O. THOMPSON, ET AL., ETC., APPELLANTS,

vs.

HUMBLE OIL AND REFINING COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

FILED APRIL 19, 1940.

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IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION

Civil Action No. 31

HUMBLE OIL & REFINING COMPANY, Complainant,

vs.

RAILROAD COMMISSION OF TEXAS, LON A. SMITH, ERNEST O. THOMPSON, G. A. Sadler and Gerald C. Mann, in Their Official and Individual Capacities, Respondents

COMPLAINT—Filed July 26, 1939

To the Honorable Judges of Said Court:

Humble Oil & Refining Company, a corporation, and a citizen of the State of Texas, hereinafter styled Complainant, files this its Original Complaint in Equity against the Railroad Commission of Texas and Lon A. Smith, Ernest O. Thompson and G. A. Sadler, in their official capacities as members of and composing the Railroad Commission of Texas, and Gerald C. Mann, Attorney General of Texas, in his official capacity as such, and against all such persons as individuals, all citizens of the State of Texas, and all hereinafter styled Respondents, and in this behalf, avers:

I

Complainant is a private corporation duly organized and existing under and by virtue of the laws of the State of Texas, with its principal place of business in Houston, Harris County, Texas. The Respondent Railroad Commission of Texas is the duly created and existing agency of the State of Texas, charged with the administration of the laws of the State of Texas governing the conservation of oil and gas and the production thereof, and Respondents Lon A. Smith, Ernest O. Thompson and G. A. Sadler are [fol. 3] the duly elected, qualified and acting members of and compose the Railroad Commission of Texas, with official residences in Travis County, Texas, and Respondent Gerald C. Mann is the duly elected, qualified and acting Attorney General of the State of Texas, with official resi-

dence in Travis County, Texas. Service upon the Railroad Commission of Texas in this case may be had by delivery of process to C. F. Petet, its Secretary, who resides in Travis County, Texas. The statutes of the State of Texas authorize suit against the Railroad Commission of Texas and the members thereof in a court of competent jurisdiction in Travis County, Texas, by any dissatisfied person affected by the conservation laws of the State of Texas relating to crude petroleum oil or natural gas, and the waste thereof, or by any dissatisfied person affected by any rule, regulation or order made or promulgated by such Commission thereunder. This suit is of such character, and this court is one of competent jurisdiction in Travis County, Texas.

II

This court has jurisdiction of the persons and subject matter in this action for the following reasons: This is a civil action, being a suit civil in nature and the amount in controversy exceeds $3000.00, exclusive of interest and costs, as will be hereinafter more fully shown; furthermore, the case involves questions arising under the Constitution of the United States, it being alleged, as hereinafter more fully appears, that certain acts of Respondents who are individuals, and certain orders of the Railroad Commission of Texas as written, construed, applied and enforced against the Complainant, are without authority of law, and are in contravention of the due process and equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

[fol. 4] III

Complainant is the owner and operator of valid and subsisting oil and gas leases covering approximately 14,691 acres of land within the producing limits of what is known as the East Texas Oil Field in Rusk, Gregg, Smith, Cherokee, and Upshur counties, Texas, upon which it has drilled approximately 2545 producing oil wells; such leases of Complainant comprising approximately 11.04% of all the producing acreage included within said field, and comprising not less than 14% of the total recoverable oil reserves in said field. As the owner of such leases, Complainant is the owner of the oil and gas in place under the several tracts of land covered by the several leases owned by it, subject

to the royalties to be paid under the terms of said leases, and is entitled currently and ultimately to produce its fair share of the recoverable oil from said field which is not less than 14% thereof. Its leases in general extend from the northerly limits of production to the southern portion of the field. For the most part its leases are situated along a line running in a northerly and southerly direction near the middle of the field; that is to say; in the main, its leases are located in the so-called "fairway", or that portion of the field where the producing sands have the greatest thickness and the largest quantity of recoverable oil in place. It owns a number of leases in and in the vicinity of the M. J. Pru and Francisco Cordova surveys in the southern portion of the field, a large block of leases in what may be designated as the London area in the field, another block of leases southwest of the town of Kilgore and other leases along the "fairway" extending in a northerly direction from the city of Kilgore. A few of its leases are situated west of the north-south axis of the field, while a few of its other leases may be said roughly to lie along the eastern side of the field. Certain of its leases with reference to which complaint is hereafter specifically made, are more fully described and identified hereinafter.

[fol. 5] Due to the physical conditions in the field hereinafter more fully set out, one well is capable, under proper and efficient operating conditions, of draining ten acres of land. Complainant has drilled its leases in the East Texas Field down to an average density of approximately 5.8 acres per well and has drilled the portion of each of its leases capable of producing oil down to an average density of considerably less than ten acres per well. As a consequence, Complainant has drilled on its leases in the field a sufficient number of wells to produce the recoverable oil under such leases and its fair share of the oil in the East Texas Field without physical waste, but is prevented and restrained from doing so by the Railroad Commission of Texas, as hereinafter more fully appears.

IV

The said East Texas Field which comprises about 133,026 acres of land, extending for a distance of approximately forty miles in length in a general northerly and southerly direction and an average distance of approximately four

miles in width in a general easterly and westerly direction, is characterized by the following physical conditions: (1) oil and gas (the gas, except in a small area in the southeastern part of the field, being in solution with the oil) exist in a porous sand known as the Woodbine sand, encountered at an approximate average depth of 3650 feet below the surface, and are contained in a reservoir which is formed by an impervious formation above and an impervious formation and water below which entrap the oil and gas in the sand between such impervious formations and water, the impervious formation joining each other at the eastern extremity of the field and water being present underneath the oil for approximately one-half of the width of the field. (2) They existed in their undisturbed state under pressure of approximately 1625 pounds per square inch and were [fol. 6] so entrapped as not to escape unless and until the impervious formation above is in some way fractured or broken or pierced by a hole. (3) The gas in solution in said oil reduces the viscosity of the oil and tends to increase its mobility, so that when the reservoir is penetrated by a well the propensity of the oil to migrate to the opening thus created and to be lifted to the surface is, by virtue of the dissolved gas, augmented, and its freedom of movement toward the area of lowered pressure around the well is increased. When the pressure in the reservoir is lowered to an average value of approximately 750 pounds per square inch, the gas in solution in said oil comes out of solution and becomes free gas, forming gas bubbles that mingle with the oil and impede its flow through the sand, and the loss of the dissolved gas increases the viscosity, thus further reducing the freedom with which the oil will move through the pore spaces of the sand to the well. (4) There are found in the reservoir beneath the oil and gas on the west side of said field and underneath approximately one-half of the surface area included in the field, large quantities of water having a connection through the sand to a surface outcropping approximately one hundred (100) to one hundred fifty (150) miles west and northwest of said oil field. This water, being under a hydrostatic pressure equal to the weight of a column of water from the surface outcropping to the bottom of the hole, therefore exerts a force or pressure laterally and vertically against the oil and gas in the reservoir; and as oil and gas are removed through wells penetrating the reservoir, the water forces them forward

and moves in to take the place of the oil and gas removed, exerting a pressure thereon, moving the oil into the wells and forcing the oil to the surface. (5) As long as the pressure in a portion of the reservoir remains above approximately 750 pounds per square inch, the gas contained in the oil in this portion of the reservoir does not come out [fol. 7] of solution and, aside from making the oil more viscous, plays no part in moving the oil to the well; and thus the water entering the reservoir along the western boundary is the principal propelling agent moving the oil to the well. As the oil rises in the well toward the surface, the pressure on it falls below 750 pounds per square inch and gas then comes out of solution, the free gas thus formed assisting materially in raising the oil to the surface. On the other hand, when the pressure in the reservoir falls below 750 pounds per square inch, gas is released from solution, and as pointed out above, the gas so released increases the viscosity of the oil and also forms bubbles in the pore spaces which retard the freedom of movement of the oil and more than nullifies any benefit due to making available additional energy from the expansion of the gas. (6) Both gas and water tend to move toward the low pressure area around the well at a more rapid rate than oil; and if the pressure is rapidly reduced through the withdrawal of gas or oil, the tendency is for the water to by-pass the oil, or envelope it, channeling through the oil-saturated section of the reservoir or coning up into the oil-saturated section, and thus trapping off the oil and preventing its recovery by the best devised production methods now in vogue; this condition being aggravated by unequal withdrawals in localized areas as against ratable withdrawals over the field under equalized pressures thereon. Ratable withdrawals restrict the rapid encroachment and channeling of the water existing beneath the oil and exerting a pressure against same. The force of the water and gas in the reservoir, constituting what is known as the reservoir energy, is exerted throughout the reservoir; and the gas and water energy are the common agencies by which all operators in the pool are permitted to recover their oil, and the lowering of the pressure in any portion of the reservoir affects recovery throughout the field, and the dissipation and waste of gas in any area adversely affects the recovery of oil throughout the pool. [fol. 8] The movement of gas, oil and water toward an

area of lowered pressure created by the penetration of the reservoir is not affected by property lines at the surface, and the oil coming to the surface through a well located on one tract of land may be drained from underneath adjoining tracts and the water drawn into the oil and gas-saturated section of the reservoir may trap off oil under the tract of land on which the well is located and, also, under adjoining tracts. (7) The thickness of the oil and gas-saturated section of Woodbine sand contained in the reservoir varies in different portions of the field, being thickest in the middle portion of the field from east to west and thinning out from the center toward the east as the two impervious formations, the one above and the one below, come together on the extreme eastern margin of the field by reason of the upward slope toward the east of the impervious formation below the Woodbine sand, and likewise thinning out on the west as the impervious formation above and the water below form a contact on the extreme western margin of the field by reason of the dip toward the west of the impervious formation above. The quantity of oil and gas underlying a particular tract of land, therefore, depends upon the number of acres of land in the tract, the thickness of the oil and gas-saturated section of Woodbine sand underneath said tract, and the porosity and degree of saturation of such sand. In general, the Woodbine sand is of a more or less uniform porosity and the extent of saturation with oil and gas is more or less uniform in all portions of the reservoir. Hence the comparative quantity of oil and gas underlying any two adjoining tracts of land within the limits of the producing area of said field may with reasonable accuracy be determined by a comparison of the quantity of surface area in the several tracts and the average thickness of the saturated section of Woodbine sand underneath each. Likewise, it is possible to determine by similar methods the ratio of the oil in place under any tract or group of tracts to the oil in place under the [fol. 9] entire field. (8) The oil and gas-saturated section of the Woodbine sand contained in said reservoir is of high permeability, thus permitting free movement of oil, gas and water from one portion of the reservoir to another portion where the pressure is lower and permitting intercommunication through all portions of the reservoir. A well drilled into said reservoir and operated under proper conditions

of control of reservoir pressure will effectively drain an area of at least ten acres. (9) When oil and gas move from the reservoir at slow and ratable rates of withdrawal over the field as a whole under conditions of control, the reservoir energy is conserved and larger ultimate recoveries of oil and gas may be secured. On the other hand, if the oil and gas are removed at high rates of flow or at non-ratable rates over the field as a whole, the reservoir energy is dissipated, the water tends to encroach into the oil and gas-saturated section unevenly, trapping off or enveloping oil, and the quantity of oil recovered ultimately from the reservoir is materially reduced. Experience has shown that when the field is produced at excessive rates an inordinate drop in reservoir pressure occurs, which tends to bring about loss of recoverable oil by the release of dissolved gas within the reservoir, the increase of the viscosity of the oil, and irregular encroachment of water. So long as the field is produced at a daily rate, averaged over a monthly period, of about 380,000 barrels of oil and of about the current volume of salt water, approximately 150,000 barrels, the pressures are maintained at values compatible with the efficient production of oil from the field.

V

The Railroad Commission of Texas, under the law, is the agency of the State of Texas, charged with the duty of administering its conservation laws. In performing this function. it is the duty of the Commission, among other things, to fix a top daily allowable production for each field in the [fol. 10] State, including the East Field, at such figure as will not cause physical waste. In allocating the production within a field between the several producers, it is the duty of the Commission under Sec. 7 of Article 6049c of Vernon's Annotated Revised Civil Statutes of 1925 to distribute, prorate, or otherwise apportion or allocate the basis; and under that statute and under the decisions of the highest appellate courts of the State of Texas, it is the duty of the Commission so to allocate production between the various producers in a field as to afford to each producer a reasonable opportunity to produce his fair share of the oil from the field, provided he has drilled on his property a sufficient number of wells to enable him to recover the oil in place under his land without waste through such wells.

VI

Since the East Texas Field was first discovered, the Railroad Commission has promulgated various spacing orders for the field. Under date of May 29, 1934, the Commission issued its order amending Rule 37 so far as it applies to the East Texas Field and prescribed what is known as a ten-acre spacing order for the field. This order remained in effect until July 24, 1939 when the Commission further amended Rule 37 in certain particulars but did not change the ten-acre spacing provision provided for in the order of May 29, 1934. Such order as amended is now in force. Under these orders, among other things, it is provided that no well in the East Texas Field should be drilled nearer than 660 feet of any other completed or drilling well on the same or adjoining tract of land and no well should be drilled nearer than 330 feet of any property line, lease line or subdivision line, provided that the Commission in order to prevent waste or to prevent confiscation of property, would grant exceptions to permit drilling within shorter distances than those stated above, whenever the Commission should determine that such exceptions are necessary either to prevent waste or to prevent the confiscation of property. The [fol. 11] Commission in practice has failed to adhere to the spacing pattern fixed for the East Texas Field, that is to say, in actual practice, more than 65% of the wells completed in the field have been drilled in exception to Rule 37 and the field as a whole has now been drilled to an average density of one well to approximately 5.17 acres. As a consequence, there is no uniformity of spacing in the field. Many areas in the field are very densely drilled, while other areas are less densely drilled, thus creating a wide diversity in the pattern upon which wells are drilled in the field; for example, on 109 acres in the field some 360 wells have been drilled to an average density of .3 of an acre per well; on 374 acres in the field, some 523 wells have been drilled to an average density of .71 of an acre per well; on 2013 acres, some 1336 wells have been drilled to an average density of approximately 1.5 acres per well; on 5637 acres, some 2237 wells have been drilled to an average density of approximately 2.5 acres per well; on 30,160 acres, some 7331 wells have been drilled to an average density of approximately 4.1 acres per well; on 57,448 acres, some 9879 wells have been drilled to an average density of 5.85 acres per well; on

37,159 acres, some 4128 wells have been drilled to an average density of 9 acres per well; and as stated above, the field as a whole has been drilled to an average density of approximately 5.17 acres per well. Leases other than those owned by Complainant in the field have been drilled to an average density of approximately one well to 5.1 acres.

VII

For a number of years, the Commission in allocating the allowable production for the East Texas Field between wells drilled therein, has used the potential factor. Under date of June 19, 1939, the Commission issued an order, effective 7 o'clock a. m., July 1, 1939 and to continue in effect until 7 o'clock a. m., October 1, 1939, fixing the allowable production for the various fields in the State of Texas, including the East Texas Field. Said order, among other things, pro-
[fol. 12] vides as follows:

"Rule 23. (2) Therefore, it is further ordered by the Railroad Commission of Texas that during each twenty-four (24) hour period beginning at 7 o'clock a. m., Central Standard Time, July 1, 1939, the owner or operator or manager of each well in the East Texas Field shall be permitted, either collectively or individually, to produce daily from each well a maximum of two and thirty-two hundredths per cent (2.32%) of its hourly potential capacity as determined by the Commission. Provided, however, that the above order shall not be enforced as to the property of Rowan & Nichols Oil Company, involved in Cause No. 624 in Equity in the United States District Court for the Western District of Texas, Austin Division, insofar as the enforcement of this order is prohibited by the injunction issued by said Court on June 14, 1939, and so long as said injunction is in force and effect."

Complainant says that after the Commission has determined the hourly potential capacity of wells to produce, it actually allocates the allowable production for the field between wells on substantially the following basis: there are approximately 554 statutory marginal wells in the field; the Commission permits them to produce all they are capable of producing up to the statutory marginal allowance of twenty barrels per well per day; non-marginal wells which are assigned an hourly potential of less than 865 barrels are

permitted to produce twenty barrels daily regardless of their actual potentials, while wells which are assigned an hourly potential of 865 barrels, or more, are permitted to produce 2.32% of such assigned hourly potential. The Commission has had such program in effect for a long time, and has announced that it has no intention of changing it.

In allocating the allowable production to the various wells in the East Texas Field, the Commission gives no consideration whatever to the amount of acreage upon which wells are drilled, nor does it consider the thickness of the saturated sand, bottom-hole pressures, the position of wells on the structure, or the amount of recoverable oil that may be in place in a lease in comparison with the recoverable oil in the field as a whole. In applying the potential factor in [fol. 13] allocating production between properties in the field, no consideration whatever is given to the amount of production which should be allocated to an operator in order to enable him to recover the equivalent of his recoverable oil in place. The potential factor as applied by the Commission, has no relation whatever to the prevention of physical waste, and amounts in practice to fixing the allowable of the various wells and allowable allocated to the various properties in the field on the Commission's fiat. The method of allocation used results in a practically equal allowable for all wells in the field, and due to the varying densities to which different portions of the field are drilled, results in non-ratable withdrawals. This situation would be remedied if production were so allocated to the various properties in the field as to afford to each operator an opportunity to produce his fair share of the oil; that is, substantially that proportion of the total field allowable which the oil under his land bears to the total oil in the field.

VIII

Said order of the Railroad Commission, as interpreted and applied, is arbitrary, capricious, unreasonable, confiscatory and void as far as Complainant is concerned, in that it arbitrarily fixes the allowables for Complainant's wells in the East Texas Field on practically a per-well basis, as above set out, and does not afford to the Complainant an opportunity, either currently or ultimately, to produce its fair share of the oil from the field; that is to say, it does not permit Complainant substantially to produce currently

that proportion of the allowable for the field as a whole which the oil under its leases bears to the total oil in the East Texas Field. In this connection, Complainant shows that it is the owner of and has in place under its leases in the East Texas Field not less than fourteen (14%) per cent of the oil in the field. It is permitted to produce currently under said order only approximately 9.932% of the field allowable. Thus, it is currently being deprived of oppor- [fol. 14] tunity to produce approximately 4% of the allowable for the field, which it is currently entitled to produce. Should such order, or orders similar to it, and the method of allocation now used, be continued in effect during the producing life of the field, Complainant will be deprived of an opportunity to produce approximately 4% of the total recoverable oil in the field, to which it is entitled. It is conservatively estimated that under proper conditions of controlled production, the East Texas Field during the remainder of its producing life can produce 2,300,000,000 barrels of oil. Complainant says that not less than 14% of such recoverable oil reserve is located under its leases and that it can produce all of its share of such recoverable oil reserve through the wells it has drilled upon its properties without waste, if permitted to do so by the Railroad Commission; however, as stated above, it is, under the order complained of, permitted to produce only approximately 9.932% of the allowable production from the field. If said order and orders similar thereto, and the present method of distribution of the allowable production, are continued in effect during the producing life of the field, Complainant will be deprived of an opportunity to produce approximately 100,000,000 barrels of oil to which it is justly entitled. Presently, the posted field price for East Texas crude is $1.10 per barrel; thus, during the producing life of the field, Complainant will be deprived of the opportunity to produce $110,000,000.00 worth of oil, computed at the current posted price, of which it is the owner, and which it is justly entitled to produce and can produce without physical waste through its wells presently drilled on its leases in the East Texas field.

Since Complainant has already drilled a sufficient number of wells on its properties adequately to drain them without waste, it would be confiscatory and discriminatory to require Complainant to make the expenditure necessary to drill, equip and operate additional wells on its properties in

order to increase its allowable production of oil. It costs ap-
[fol. 15] proximately $10,000.00 to drill and complete a well in the East Texas field. It would require approximately 350 additional wells to develop Complainant's leases to the average density to which other leases in the field are drilled and would cost Complainant approximately $3,500,000.00 to drill and equip such additional wells. Any additional wells which Complainant is required to drill in the field in order to produce its fair share of the oil would result in a wholly unnecessary expenditure. To require Complainant to drill such wells as a condition precedent to obtaining its proper allowable production amounts to taking Complainant's property without compensation and without due process of law and denies to Complainant the equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution.

IX

The effect of the orders as administered is to allow the owners of small tracts or the owners of densely drilled acreage to produce practically as much oil from their several wells as the owners of less densely drilled tracts are permitted to produce from their several wells, and the result is to restrain the owners of less densely drilled land in the production of oil from their land, while permitting the owners of densely drilled tracts to take the oil belonging to the former. The Complainant here submits some typical cases showing that as said order is construed, applied and enforced by the Railroad Commission, it glaringly discriminates against Complainant and takes its property without any compensation, and without due process of law.

(1) Complainant's J. F. Bowles lease covering 100.50 acres in the D. Ferguson Survey, Gladewater District, Gregg County, Texas, has 19 wells, or an average density of one well to 5.3 acres. Under said order, the average daily allowable production on said lease is 400.77 barrels, or an average per acre daily allowable production of 3.99 barrels. Said lease of Complainant is directly offset by the
[fol. 16] Rudco-Fenn Lease in the D. Ferguson Survey, containing approximately 3.7 acres of land, on which are drilled two wells, to an average density of one well to 1.9 acres, with a daily allowable production of 43.15 barrels,

or 11.67 barrels per acre per day which is approximately three times as much daily allowable per acre as is given to Complainant's lease. Said lease of Complainant is also directly offset by Rancho Oil Company-M. Fenn lease in the D. Ferguson Survey, containing approximately 7.3 acres of land, on which are located three wells with an average density of one well to 2.4 acres, with a daily allowable production of 64.26 barrels or 8.8 barrels per acre per day, which is more than two times as much daily allowable per acre as is given to Complainant's lease. Said lease of Complainant is also directly offset by the Tillery-Wheeler lease in the D. Ferguson Survey, containing approximately 2.2 acres on which one well is drilled, with a density of 2.2 acres per well, with a daily allowable production of 20.53 barrels, or 9.33 barrels per acre per day, which is almost three times as much daily allowable per acre as is given to Complainant's lease.

(2) Complainant owns a lease covering 228.50 acres in the Cordova Survey in Rusk County, Texas, known as the Plowman "A" and "B" lease, on which are 52 producing oil wells, said lease being drilled to an average density of 4.39 acres per well. Under said order, Complainant is allowed to produce some 1050.73 barrels per day, or 4.60 barrels per acre per day. Said lease of Complainant is directly offset by the F. H. E. Oil Company-M. L. Thompson "E" lease in the same survey, containing approximately 1.25 acres, on which is drilled one well, with an allowable production of 20 barrels per day, or 16 barrels per acre per day, which is almost four times as much per acre per day as the allowable production from the offset lease belonging to Complainant. Said lease of Complainant is also directly offset by the Magnolia Petroleum Company-C. Barksdale lease in the Pru Survey covering approximately 15 acres, on which five wells are drilled, said lease being drilled to an average density of 3 acres per well, with [fol. 17] an allowable of 100 barrels per day, or 6.67 barrels per acre per day, the allowable production from said lease, therefore, being approximately one and one-half times as much per acre per day as the allowable production from Complainant's said lease. Said lease of Complainant is also directly offset by the N. P. Powell-M. L. Thompson lease in the Pru Survey, containing 10 acres, on which five wells are drilled, the average density being 2 acres per

well, with an allowable of 100 barrels per day from said lease, or an average allowable of 10 barrels per acre per day, being more than two times as many barrels per acre per day as Complainant is permitted to produce from its Powell lease.

(3) Complainant's A. L. Hughes lease on the Hampton Survey in Gregg County, Texas, contains 91.8 acres, has 20 wells or is drilled to a density of one well to 4.6 acres and has an allowable of 421.29 barrels, or an allowable of 4.7 barrels per acre per day. Complainant's said lease is offset by the Trapp-Blankenship-M. J. Fenn lease in said Hampton Survey, embracing one acre, on which one well is drilled, with an allowable of 21.23 barrels per acre per day; by the Rancho Oil Company-M. J. Fenn "B" lease in the Ferguson Survey, containing 11 acres, on which 4 wells are drilled to an average density of 2.75 acres per well, with an allowable of 86.07 barrels, or 7.82 barrels per acre per day; by the Atlantic-Holly Spring School lease in the Ferguson Survey, containing 2 acres, on which one well is drilled, having an allowable production of 21.58 barrels, or an allowable of 10.79 barrels per acre per day; by the McLemore-Gladewater Independent School lease in the Wakeland Survey, containing 1 acre, on which one well is drilled, with an allowable production of 22.16 barrels per day, or an allowable production of 22.16 barrels per acre per day.

(4) Complainant's Dura Thomas lease in the Van Winkle Survey in Gregg County, Texas, covers 59.05 acres, on which 22 wells are drilled to an average density of 2.7 acres [fol. 18] per well, with an allowable of 440 barrels or 7.45 barrels per acre per day. It is offset by the Atlantic-T. Elder "A" lease in the Van Winkle Survey, covering 7.36 acres, on which 7 wells are drilled to a density of 1.05 acres per well, with an allowable of 140 barrels per day, or 19.02 barrels per acre per day; by the Wright-Smith Oil Co.-I. E. Harris lease in the Van Winkle Survey, covering 1.31 acres, on which two wells are drilled to an average density of .65 acres per well, with an allowable of 40 barrels per day, or 30.53 barrels per acre per day; by the M. E. Trapp-J. King lease in the Van Winkle Survey, covering 2 acres, on which five wells are drilled to an average density of .4 of an acre per well, with an allowable of 100 barrels per day, or 50 barrels per acre per day and by

the Producers Inv. Co.-J. A. Butts lease in the Van Winkle Survey, covering 6.58 acres, on which 9 wells are drilled to an average density of .73 of an acre per well, with an allowable of 180 barrels per day, or 27.36 barrels per acre per day.

(5) Complainant's L. D. Crim lease in the Sevier and Chism Surveys in Rusk County, Texas, contains 915.43 acres, on which 188 wells are drilled to an average density of one well to 4.87 acres, with an allowable production of 3863.38 barrels, or 4.22 barrels per acre per day. It is offset by Lyons-D. Ladd lease in the Hobson Survey in Rusk County, Texas, containing 2.5 acres, on which one well is drilled, with an allowable production of 20 barrels per day, or 8 barrels per acre per day; by the Woodley Petroleum Company-D. Ladd lease in the Hobson Survey in Rusk County, Texas, covering 2.5 acres, on which one well is drilled, with an allowable production of 20 barrels per day, or an allowable of 8 barrels per acre per day; by Upchurch-W. J. Brightwell lease in the Winn Survey in Rusk County, Texas, covering 10 acres, on which 4 wells are drilled to an average density of 2.5 acres per well, with an allowable of 81.2 barrels per day, or 8.12 barrels per [fol. 19] acre per day; by Luling Oil & Gas-W. J. Brightwell "A" lease in the Winn Survey, covering 10 acres, on which 4 wells are drilled to an average density of 2.5 acres per well, with an allowable of 82.48 barrels per day, or 8.25 barrels per acre per day.

(6) Complainant's Kangerga lease in the Pru Survey in Rusk County, Texas covers 314.75 acres, on which 71 wells are drilled to an average density of 4.43 acres per well, with an allowable production of 1420 barrels per day, or 4.52 barrels per acre per day. It is offset by the Pipes-Giles lease in the Pru Survey, containing 2 acres, on which one well is drilled with an allowable of 20 barrels per day, or an allowable of 10 barrels per acre per day; and by the Oklahoma-Texas Trust-Giles lease in the Pru Survey, containing 4 acres, on which three wells have been drilled, with an average density of one well to each 1.33 acres, with an allowable production of 60 barrels per day, or 15 barrels per acre per day.

(7) Complainant's D. Ladd lease in the Hobson Survey in Rusk County, Texas, embraces 43.85 acres, on which 8

wells are drilled to an average density of one well to 5.48 acres, with an allowable of 160 barrels per day, or 3.65 barrels per acre per day. This lease is offset by the Olvey & Sample-F. Bean lease in the Hobson Survey in Rusk County, Texas, containing 3 acres of land, on which there is one well, same being drilled to an average density of one well to each 3 acres of land, with an allowable production of 20 barrels per day, or 6.67 barrels allowable production per acre per day; and the Robert-Mt. Comfort Church lease in the Hobson Survey, containing 2 acres of land, on which one well is drilled, the same being drilled to an average density of one well to 2 acres, with an allowable production of 20 barrels per day, or 10 barrels per acre per day.

(8) Complainant's J. A. Knowles lease in the Van Winkle Survey in Gregg County, Texas, contains 101.20 acres, on which 29 wells are drilled to an average density of 3.49 acres [fol. 20] per well, with an allowable production of 580 barrels, or 5.73 barrels per acre per day. It is offset by the W. A. Brown-Cheeseborough lease in the Van Winkle Survey, covering 1.53 acres of land, on which two wells are drilled to an average density of .76 of an acre per well, with an allowable of 40 barrels, or 26.14 barrels per acre per day; by the Hastings et al.-W. M. Robinson lease in the Van Winkle Survey, covering 4.70 acres, on which three wells are drilled to an average density of 1.56 acres per well, with an allowable production of 60 barrels, or 12.77 barrels per acre per day; by the J. J. Jenkins-C. Alexander lease in the Van Winkle Survey, covering 2.11 acres of land, on which two wells have been drilled to an average density of 1.05 acres per well, with an allowable of 40 barrels, or 18.96 barrels per acre per day; by the Dodwell-L. Alexander lease in the Van Winkle Survey, covering 3.5 acres of land, on which 4 wells are drilled to an average density of .87 of an acre per well, with an allowable of 80 barrels, or 22.86 barrels per acre per day; by the Harcher-K. O. P. Lodge lease in the Van Winkle Survey, covering .25 of an acre of land, on which one well is drilled to an average density of .25 of an acre per well, with an allowable of 20 barrels, or 80 barrels per acre per day; by the Potter Brothers and A. Cohen-Colored Baptist Church lease in the Van Winkle Survey, covering 2.12 acres, on which three wells are drilled to an average density of .71 of an acre

per well, with an allowable of 60 barrels, or 28.3 barrels per acre per day; by the A. B. Spear-Ecter lease in the Van Winkle Survey, covering one acre of land, on which two wells are drilled to an average density of .50 of an acre per well, with an allowable of 40 barrels per acre per day; by the C. H. Murray-Oddfellows Lodge lease in the Van Winkle Survey, covering .29 of an acre, on which one well is drilled to an average density of .29 of an acre per well, with an allowable of 20 barrels, or 68.97 barrels per acre per day.

[fol. 21] (9) Complainant's G. W. Johnson lease in the Hooper Survey in Gregg and Upshur Counties, Texas, contains 98.50 acres of land, on which 24 wells are drilled, with an average density of 4.1 acres per well, with an allowable of 482.13 barrels or 4.89 barrels per acre per day. It is offset by the Canadian-Christian Heirs lease in the Hooper Survey in Gregg and Upshur Counties, Texas, covering .75 of an acre of land, on which one well is drilled to an average density of .75 of an acre per well, with an allowable of 20.88 barrels, or 27.84 barrels per acre per day; by the Margay-Tom Christian lease in the Hooper Survey, containing 24 acres, on which 12 wells are drilled to an average density of 2 acres per well, with an allowable of 253.46 barrels, or 10.56 barrels per acre per day; by the F. H. E.-J. M. Christian lease in the Hooper Survey, covering 7.56 acres, on which 6 wells are drilled to an average density of 1.26 acres per well, with an allowable of 127.72 barrels per day, or 16.89 barrels per acre per day; by the Woodrow-D. M. Johnson lease in the Hooper Survey, covering 1.5 acres of land, on which one well is drilled to an average density of 1.5 acres per well, with an allowable production of 20.30 barrels per day, or 13.53 barrels per acre per day; and by the Atlantic-G. W. Johnson lease in the Hooper Survey, covering 1.5 acres, on which one well is drilled to an average density of 1.5 acres per well, with an allowable production of 20.30 barrels per day, or 13.53 barrels per acre per day.

(10) Complainant's Della Johnson "A" lease in the John R. Crosby Survey in Gregg County, Texas, covers 59.33 acres on which 9 wells were drilled to an average density of 6.59 acres per well with an allowable production of 160 barrels per day or 2.7 barrels per acre per day. It is offset

by United East & West Oil Company-Armstrong lease in the Martha Dillard Survey covering .16 of an acre, on which one well has been drilled, with an allowable of 20 barrels [fol. 22] per day, or 125 barrels per acre per day; by the Lange Cable Tool Drilling Co.-J. C. Beamer lease in the Martha Dillard Survey, covering .90 of an acre, on which one well is drilled to a density of .90 of an acre per well, with an allowable of 20 barrels per day, or 22.22 barrels per acre per day; but the T. W. Lee-Lee "Fee" in the L. J. Rigsby Survey containing one acre, on which one well is drilled to a density of one acre per well, with an allowable of 20 barrels per day or 20 barrels per acre per day; by the Roosth & Genecov-Todd et al. lease in the Martha Dillard Survey covering 2.75 acres on which two wells have been drilled to an average density of one well to 1.38 acres, with an allowable of 40 barrels per day or 14.55 barrels per acre per day; by the Meco Production Co.-T. & P. R. R. Company (Block 48) in the Martha Dillard Survey covering 1.7 acres on which one well has been drilled to a density of one well to 1.7 acres, with an allowable of 20 barrels per day, or 11.76 barrels per acre per day; by Meco Production Co.-Hickman (Block 71) in the Martha Dillard Survey covering 2 acres on which one well has been drilled to a density of one well to 2 acres, with an allowable of 20 barrels per day, or 10 barrels per acre per day; the Meco Production Co.-T. & P. R. R. Company (Block 72) in the Martha Dillard Survey covering 2.5 acres, on which one well has been drilled to a density of 2.5 acres per well, with an allowable of 20 barrels per day, or 8 barrels per acre per day; by the Roosth & Genecov-Dellah Johnson in the Martha Dillard Survey covering 2.5 acres on which one well has been drilled to a density of one well to 2.5 acres, with an allowable of 20 barrels per day or 8 barrels per acre per day; and by the Pitzer & West-Dellah Johnson "B" lease in the L. J. Rigsby Survey covering 11.23 acres on which 4 wells have been drilled to a density of 2.81 acres per well, with an allowable of 80 barrels per day, or 7.12 barrels per acre per day.

[fol. 23] (11) Complainant's W. B. Kee lease in the Field and Womack Surveys in Rusk County, Texas, covers 95.38 acres, on which 16 wells have been drilled to an average density of one well to 5.96 acres, with an allowable of 320 barrels per day or 3.36 barrels per acre per day. It is offset by Sklar Oil Company-J. H. Stewart lease in the John

Womack Survey covering 2 acres on which one well has been drilled to a density of one well to two acres, with an allowable of 20 barrels per day or 10 barrels per acre per day; by the Snyder-J. H. Stewart lease in the John Womack Survey covering 2.70 acres on which one well has been drilled to a density of one well to 2.7 acres, with an allowable of 20 barrels per day or 7.41 barrels per acre per day; by the Indiana (B. L. Snyder)-J. H. Stewart lease in the John Womack Survey covering 2.7 acres, on which one well has been drilled to a density of one well to 2.7 acres, with an allowable of 20 barrels per day or 7.41 barrels per acre per day; by the C. L. Archer-J. H. Stewart lease in the John Womack Survey covering 9.45 acres, on which 3 wells have been drilled to an average density of one well to 3.15 acres, with an allowable of 60 barrels per day or 6.35 barrels per acre per day; by the Johnson & Owens-J. H. Stewart lease in the John Womack Survey covering 7.5 acres, on which two wells have been drilled to an average density of 3.75 acres per well, with an allowable of 40 barrels per day or 5.33 barrels per acre per day; and by the I. M. Williams, Trustee-T. H. Goforth lease in the Lindley and Thompson Surveys covering 18.75 acres, on which 5 wells have been drilled to an average density of one well to 3.75 acres, with an allowable of 100 barrels per day, or 5.33 barrels per acre per day.

In addition to direct offset leases, there are many leases of other operators, too numerous to point out specifically here, draining great quantities of oil from Complainant's properties, because of the fact that they are closely drilled [fol. 24] under exceptions to the spacing rule of the Railroad Commission of Texas and are allocated much higher allowable production per acre daily under the order complained of than is allowed to Complainant's leases just as favorably located and having an equivalent per acre volume of recoverable oil beneath them.

There are other properties of Complainant in said field discriminated against under the provisions of said order as interpreted and applied in a manner similar to those above set forth; and for the field as a whole, the properties of Complainant are discriminated against as compared with the properties of other producers in the field as set out above.

The leases offsetting Complainant's several leases in the East Texas Field have substantially the same sand thickness, bottom-hole pressure, position on the structure and quantity of recoverable oil in place per acre as have Complainant's several leases; and there is no reason why such offsetting leases should be permitted to produce a greater quantity of oil per acre per day than are Complainant's several leases which are offset by them. In many instances such offsetting leases have been permitted by the Railroad Commission to produce far in excess of the quantity of recoverable oil which was in place under them at the time they were drilled. Furthermore, under the method of distribution of allowable complained of, a well drilled by another operator on a tract, however small, having very thin saturated sands and very little oil in place, is allowed to produce practically as much oil per day as are Complainant's several wells even though they are drilled on much larger tracts, containing on the average much more oil-saturated sand and vastly larger quantities of oil in place. Other operators have drained and will continue to drain vast quantities of oil from under Complainant's leases; and since Complainant has been restrained and is now restrained by the Commission from producing its fair share of the recoverable oil in the East Texas Field, as set out above, [fol. 25] the effect is that the Commission is, to all intents and purposes, taking Complainant's oil and is gratuitously giving it to other operators in the East Texas Field under the guise of exercising the police power. Said order, as written, construed and applied by the Commission, transcends the necessities of the case and, as stated before, amounts to an arbitrary fiat.

X

Complainant shows that the Respondents, members of the Railroad Commission of Texas, have over a long period of time arbitrarily allocated the allowable production for the East Texas Field between the various leases in that field by use of the method herein complained of, and that the Complainant, as well as other operators in said field, have heretofore repeatedly complained and protested against the allocation of the allowable production of said field on any such basis. Complainant has done so on the ground that it was thereby deprived of an opportunity to

produce its fair share of the oil from the field; in particular, the Complainant made such protests with the Railroad Commission of Texas at its statewide hearings on May 15, 1933, on August 19-20, 1935, on August 26-27, 1935, and on June 12, 1939, and filed its formal protest with the Railroad Commission on June 16, 1939, as is shown by "Exhibit A" attached hereto and made a part hereof; that notwithstanding such repeated protests and others which were made, the Respondent, Railroad Commission of Texas, and the members of said Commission, have steadfastly refused to change the unfair and inequitable basis of allocation complained of and in the face of and despite such protests, proceeded to promulgate said order of June 19, 1939, and continued the same method of distribution, thus in effect denying the relief prayed for by Complainant and clearly showing a steadfast determination on the part of the Railroad Commission and its aforesaid members not to adjust the allowable between properties in the East Texas Field on such a basis as will afford to Complainant and others [fol. 26] similarly situated, an opportunity to produce their fair share of the current allowable production from the field, as above set forth.

Complainant further avers that it is possible for the Railroad Commission of Texas to issue and enforce an order fixing a reasonable top allowable daily production for the East Texas Field at such figure as would not cause physical waste, if the proper allocation is made between properties in the field, and would be within the reasonable market demand for oil from said field. Such daily average top allowable for said field, according to evidence heretofore introduced before the Railroad Commission, would be approximately 380,000 barrels per day net, averaged over a monthly period, so long as water is produced at approximately the current rate. It is also possible for the Railroad Commission of Texas to enter and enforce a reasonable order, properly allocating such allowable production for the field between the various leases and properties in the field in such manner as to afford an opportunity to the owners of the several leases in the field, including Complainant, to produce their fair share of the oil from the field. In writing such an order, the Railroad Commission of Texas could take into consideration such factors as acreage, saturated sand thickness, bottom-hole pressures,

position on the structure and the quantity of oil under such leases, when compared with the quantity of oil in the field as a whole; and could write and enforce an order which would treat the several operators in the field, including Complainant, fairly and justly and would not possess the qualities of unreasonableness, discrimination and confiscation which are characteristic of the method of distribution complained of herein.

XI

Complainant is not contending that the conservation laws of the State of Texas, when properly construed and applied, are invalid, unless they authorize or require the Railroad [fol. 27] Commission of Texas and the other Respondents who are members of such Commission, to enforce the method of distribution herein complained of; nor is it asserting that Rule 37 of the Railroad Commission as promulgated for the East Texas Field is invalid; nor is it asking that the daily top allowable production for the field be increased beyond an average of about 380,000 barrels of oil per day. Complainant has consistently been an advocate of and has punctiliously observed the conservation laws of the State of Texas and Rule 37 in its operations. It has asked and now asks that the Commission so write and administer its orders as to place a proper daily top allowable for the East Texas Field, and to afford to Complainant a reasonable opportunity to produce that proportion of the current daily allowable production for the field that the recoverable oil under its leases bears to the recoverable oil in the field as a whole. It contends and alleges that, for the reasons herein set out, the order and acts of the Railroad Commission complained of herein are arbitrary, capricious, unreasonable, confiscatory and void and deprive this Complainant of its property without compensation and without due process of law and denies to this Complainant the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States, and deprives Complainant of its liberties, property, privileges and immunities without due course of the law of the land in violation of Sections 13 and 19 of Article I of the Constitution of the State of Texas, and deprives it of its equal rights in violation of Section 3 of Article I of the Constitution of the State of Texas.

XII

Complainant further alleges that the acts of the Railroad Commission of Texas herein complained of, are done or purport to be done under the provisions of the conservation laws of the State of Texas, which specifically authorize injunctive relief against the Commission and the members thereof with respect to invalid rules, regulations, orders [fol. 28] or acts. Moreover, under Article 6036 of the Revised Civil Statutes of 1925, as amended, severe penalties and forfeitures are prescribed for violation of any rule, regulation or order of the Railroad Commission promulgated under the conservation statutes. It is made the duty of the Railroad Commission of Texas and the Attorney General to enforce the orders, rules and regulations of said Commission. The Respondent Gerald C. Mann, as Attorney General, and the other Respondents herein, as members of, and composing the Railroad Commission of Texas, are threatening to enforce the pains and penalties provided in said Article against all persons who violate said rules and order of the Railroad Commission herein complained of; that under the laws of the State of Texas, the Attorney General and members of the Railroad Commission, when acting in their official capacities, are not liable for any damages resulting from the enforcement of the laws of the State of Texas and the valid orders, rules and regulations of the Railroad Commission of Texas made pursuant thereto; nor is the State of Texas made liable for any such damages resulting from the enforcement or attempted enforcement of such laws, orders, rules and regulations; that there exists no adequate remedy at law for the immediate and irreparable wrongs, injuries and damages resulting to Complainant as above set forth caused by the enforcement of the acts herein complained of, and any attempted collection and enforcement of the pains and penalties provided for under said Article 6036, as amended; that should the Complainant, in order to produce its fair share, be required to violate the orders and regulations, and be relegated to its remedy at law and forced to stand upon the invalidity and unconstitutionality of the acts herein complained of in a suit by the Respondents to enforce penalties, then the Complainant would be compelled to run the risk and the hazard of subjecting itself to the extreme, excessive, drastic [fol. 29] and destructive penalties provided for in said

article in order to determine the validity of the acts of the Railroad Commission of Texas herein complained of; that unless a preliminary injunction issue herein followed by a permanent injunction in due course, the Complainant will suffer immediate and irreparable injury, loss and damage in the manner and amounts hereinabove set forth aggregating thousands of dollars per day, and, if long continued, resulting in the loss of millions of dollars to Complainant.

XIII

By reason of the facts alleged, Complainant in the past has suffered, and in the future will continue to suffer, irreparable loss and injury, and by reason of the allegations hereinabove set forth is without adequate remedy at law.

Premises considered, Complainant prays:

(1) That a temporary restraining order be issued as herein more specifically set forth, after notice to Respondents, and a hearing be held not later than five (5) days from date of the presentation of this complaint to the court. Complainant prays that the temporary restraining order here prayed for be effective until such time as the three judge court applied for herein shall finally act upon the application for preliminary injunction, and that such temporary restraining order restrain Respondents, their successors, representatives, agents, servants, and employees from attempting to enforce against the Complainant, in the conduct of its producing operations upon its properties in the East Texas Field hereinbefore mentioned, the orders, rules, regulations and schedules governing the allocation of production in the said East Texas Field, especially the order promulgated by the Commission on June 19, 1939, as such order is interpreted, applied and enforced, and from [fol. 30] enforcing against Complainant any of the terms and provisions of similar rules, regulations, orders and schedules, also renewals and extensions, and as well as any and all other similar proration orders, rules, regulations and schedules for the East Texas Field having substantially the same effect; and further enjoining the Respondents, and each of them, from enforcing against the Complainant any rules, regulations, orders and schedules governing and providing for the proration of oil in the East Texas Field that deny to the Complainant the right to produce substantially that proporation of the total daily allowable that the re-

coverable oil under its leases bears to the recoverable oil in the East Texas Field, and further enjoining Respondents from denying to Complainant tenders to move such oil and interfering in any way with the pipe line company or other transportation agency in transporting the oil so produced. Complainant also prays that Respondents be restrained from suing for penalties, or from attempting otherwise to claim or collect penalties, or from attempting in any other manner to penalize Complainant, or to make any claim or demand against it or against oil or gas produced by it by reason of the production of oil not in compliance with the rules, regulations, orders, schedules and acts complained of herein.

In connection herewith should the Court, in order to fix temporary allowables for Complainant's wells, not desire to hear evidence with respect to the recoverable oil in each of its leases so that the increased allowable may be distributed substantially on the basis of the recoverable oil estimated to be on each lease, then Complainant prays that the total allowable to it under the present order be increased 23,000 barrels a day, or 4.4% of the total allowable for the field as fixed by the Commission under its present order, such additional allowable to be distributed, until otherwise ordered by the Court, among the wells of Complainant in the East Texas Field by increasing the allowable of each well by 44/100 of its allowable as fixed in the existing schedule.

[fol. 31] (2) That a three judge court be constituted and assembled pursuant to Section 266, Judicial Code, as amended, for the purpose of hearing this complaint and determining Complainant's prayer for preliminary injunction as herein prayed for and for finally disposing of this action upon its merits.

(3) That after notice and hearing by such three judge court a preliminary injunction be issued similar in its scope, terms and provisions to the temporary restraining order prayed for in subdivision numbered (1) of Complainant's prayer, and that such preliminary injunction herein prayed for be continued in full force and effect until final disposition of this action upon its merits.

(4) That upon final hearing the preliminary injunction prayed for herein be made permanent and that a decree be

entered decreeing and adjudging invalid the aforesaid order, rules, regulations and schedules of the Railroad Commission, as well as all renewal and extension orders, rules, regulations and schedules substantially continuing same in effect, or any schedule or method of distribution that may be promulgated or adopted by the Commission based upon a principle similar to the above described order of June 19, 1939, as interpreted and applied, and schedules made pursuant thereto as they apply to Complainant; that said order, rules, regulations and schedules, as they affect Complainant, be set aside, vacated and annulled; and that the Respondents and their successors, representatives, agents, servants and employees be permanently enjoined from enforcing said order, regulations, rules and schedules, and renewals and extensions thereof, or orders, rules, regulations and schedules similar thereto, against the Complainant, and from taking any steps whatsoever, directly or indirectly, restricting Complainant's right to produce and to secure tenders for and the transportation of that proportion of the total daily allowable oil for the field that the recoverable oil under its leases in the East Texas Field bears to the total recoverable oil in said field; and that Respond- [fol. 32] ents be restrained from suing for penalties, or from attempting otherwise to claim or collect penalties, or from attempting in any other manner to penalize Complainant, or to make any claim or demand against it or against oil or gas produced by it by reason of production of oil not in compliance with the rules, regulations, orders, schedules and acts complained of herein.

(5) That should the Court be unwilling to grant the permanent relief prayed for in the absence of specific action by the Railroad Commission of Texas specifically refusing or otherwise disposing of the motion presented by the Complainant herein to the said Railroad Commission upon June 16, 1939, then in the alternative Complainant prays for the temporary and preliminary relief asked for in paragraphs (1) and (3) of this prayer, and also for final relief in the nature of a permanent injunction to remain in force until the Commission shall have set aside and vacated the rules, regulations, order and schedules herein complained of, or until the Commission shall have substantially granted the relief or removed the injuries herein complained of; and that such injunction herein prayed for shall remain in

force so long as the Complainant is subjected to the confiscation of its properties and the injuries complained of by the enforcement against it of such arbitrary and unreasonable rules, regulations, orders and schedules in the manner hereinabove set forth.

(6) For a judgment against the Respondents for costs of suit and for such other and further relief as the evidence justifies and as to the Court seems equitable in the premises.

(S.) Rex G. Baker, R. E. Hardwicke, R. E. Seagler, Felix A. Raymer, Carl Illig, Jr., of Houston, Texas. Powell, Wirtz, Rauhut & Gideon, by J. A. Rauhut, of Austin, Texas. Of Counsel: E. E. Townes of Houston, Texas.

[fol. 33] *Duly sworn to by John R. Suman. Jurat omitted in printing.*

[fol. 34] EXHIBIT "A" TO COMPLAINT

Houston, Texas, June 16, 1939.

To the Honorable Railroad Commission of Texas:

Now comes Humble Oil & Refining Company, hereinafter sometimes called "Applicant," and respectfully presents this as its motion, requesting the Commission to amend and modify its statewide order dated April 26, 1939 as written and as construed, administered and applied, and to write, construe, administer and apply all future orders fixing the allowable production for the East Texas Field and allocating such allowable production between various properties in the field in such manner as to allocate to Applicant and permit Applicant to produce currently its fair share of such allowable production of oil and in support of this motion, Applicant respectfully says:

1. Applicant is the owner and operator of numerous producing oil and gas mineral leases in the East Texas Field. Its leases in general extend from the northern limits of production to the southern portion of the field. For the most part, its leases are situated along an axis running in a northerly and southerly direction near the middle of

the field; that is to say, in the main, its leases are located in the so-called fairway or in that portion of the field where the producing sands have the greatest thickness and the largest quantity of recoverable oil in place. To be more specific, it owns a number of leases in the M. J. Pru and Francisco Cordova Surveys in the southern portion of the field, a large block of leases in what may be designated as the London area in the field, another block of leases southwest of the town of Kilgore and numerous other leases along the fairway extending in a northerly direction from [fol. 35] the city of Kilgore. A few of its leases are situated west of the north-south axis of the field, while a few of its other leases may be said roughly to lie along the eastern side of the field. Altogether the producing leases operated by it in the East Texas Field occupy in excess of 11% of the producing acreage in the field and contain approximately 14% of the recoverable oil and gas reserves in the field.

2. Applicant has drilled its leases in the field down to an average density of approximately one well to each 5.83 acres of land. It has drilled such number of wells and has so spaced its wells on its leases as to be reasonably able to produce the recoverable oil under its properties without physical waste. Notwithstanding this fact, there are numerous areas in the field offsetting various properties owned by the Applicant which are drilled to a much greater density than are Applicant's properties; and since the Railroad Commission has prescribed an almost equal allowable for all wells in the field, it follows that in many places in the field the Applicant's properties are being severely drained by wells on adjacent properties or other properties in the vicinity of its leases. Not only this, but the method employed by the Commission in fixing the allowable for wells in the field causes non-uniform withdrawals. The withdrawals are excessive in localized areas where wells are densely drilled, while there are much smaller withdrawals per acre in other areas which are not so densely drilled—thus causing an uneven rise of the water table and uneconomic or wasteful use of the reservoir energy. The allocation of allowables as between wells and properties in the field has no relation whatsoever to the actual recoverable reserves of oil under the various properties in the field.

Applicant further says that as a consequence of the nethod by which the Commission allocates the allowable production of oil between the various wells and properties [fol. 36] in the field, it is permitted to produce only approximately 9/90% of such total allowable for the field, while, as stated above, it is the owner of and is entitled to produce approximately 14% of the recoverable oil in the field. As a consequence, under the existing proration order and under the plan of production provided for in the order as it is actually construed, applied and administered, the Applicant is being deprived of the opportunity to produce its fair share of the oil in the field; and if orders of similar character are promulgated in the future, the Commission will thereby continue to deny to this Applicant the right to produce its fair share of the recoverable oil in the field, and in effect will confiscate vast quantities of oil, of which the Applicant is the owner, and which it is justly entitled to produce. This would amount to approximately 4% of the total recoverable reserves in the field, if the present order or orders similar in effect to it were continued in force.

3. Applicant further shows to the Commission that heretofore uncontradicted evidence has been introduced at numerous statewide hearings held by the Commission to the effect that the total amount of oil which should be withdrawn from the East Texas Field during any one day on the average should not exceed 380,000 barrels, and that if the average daily allowable production from the field should materially exceed that figure, the bottom hole pressures will drop at an inordinately rapid rate and physical waste of oil and gas will result therefrom. According to the uncontradicted evidence before the Commission, therefore, the top average daily production from the East Texas Field should not exceed approximately 380,000 barrels per day.

4. Under the law, it is the duty of the Railroad Commission to allocate the allowable production for the field between the various producing properties situated in the field on a reasonable basis in such manner as to afford to [fol. 37] each operator a fair opportunity to produce his share of the recoverable oil in the field. The record of the evidence heretofore introduced in various statewide hearings before the Railroad Commission clearly shows

that in the statewide order of the Railroad Commission issued under date of April 26, 1939, fixing the basis upon which the allowable production for the East Texas Field is allocated between the various properties in the field as that order has been construed, applied and administered by the Commission, affords to many operators in the field an opportunity to produce far in excess of their fair share of the current allowable production from the field and at the same time restrains many other operators, including the Applicant, from producing their fair share of the current field allowable. Any other order based upon a similar principle and having future application, would have the same effect. The result is, therefore, that Applicant's oil is being taken from it currently in large quantities and is given to other operators whose properties are more densely drilled than are Applicant's properties. The order of the Commission complained of and any similar order that may hereafter be promulgated by the Commission is unreasonable, arbitrary, discriminatory, confiscatory and void as to Applicant and all those who may be similarly situated and deprives the Applicant of its property without compensation and without due process of law and denies to the Applicant the equal protection of the law in violation of the Fourteenth Amendment to the Constitution of the United States and deprives Applicant of its liberty, property, privileges and immunities without due course of the law of the land in violation of Sections 13 and 19 of Article I of the Constitution of the State of Texas and deprives Applicant of its equal rights in violation of Section 3 of Article I of the Constitution of the State of Texas. Applicant further says that said order of April 26, 1939 as written and as construed, applied and administered by the Commission is, so far as Applicant is concerned, in direct [fol. 38] violation of the principle announced by the United States District Court for the Western District of Texas, Austin Division, in Cause 624, In Equity, styled, Rowan & Nichols Oil Company, Complainants, v. Railroad Commission of Texas, Respondents, in a memorandum opinion handed down on June 12, 1939.

5. Applicant would respectfully call the Commission's attention to the fact that heretofore at different statewide hearings, ample evidence has been introduced upon which it could base a reasonable order allocating the allowable

production in the East Texas Field between the various properties therein. Particular reference is made to the following statewide hearings; that of May 15, 1933; that of August 19-20, 1935 and that of August 26-27, 1935. The record of testimony in those hearings has been reintroduced from time to time at statewide hearings held by the Commission since those dates and in particular those records were reintroduced in evidence at the statewide hearing of the Commission held in the City of Austin on June 12, 1939. The attention of the Commission is respectfully called also to statements made by Mr. R. E. Hardwicke and Mr. Hines H. Baker at the statewide hearing on June 12, 1939, in which they invited the attention of the Commission to the record previously introduced and to the fact that those records furnished the Commission with ample evidence upon which to enter and enforce reasonable and valid orders fixing the allowable production for the East Texas Field and allocating such production on an equitable basis between the various properties in that field.

6. Should the Commission feel that it should be in possession of additional facts before granting to Applicant the relief herein requested, or should the Commission be of the opinion that a further hearing should be had on the matters raised in this motion, Applicant respectfully requests that the Commission grant it a hearing immediately in order that the relief prayed for may be granted in the statewide order of the Commission that will be issued for the month [fols. 39-43] of July, 1939, in which the allowable production for the East Texas Field and the basis for allocating the production between properties in the East Texas Field will be fixed.

Wherefore, the premises considered, your Applicant respectfully prays that the Commission's statewide order dated April 26, 1939, and the schedule of allowable production made pursuant thereto, be so amended as at once to permit your Applicant to produce its fair share of the recoverable oil in the East Texas Field, being not less than 14% of the allowable fixed for the entire field, and that in any and all future orders which may be promulgated by the Commission fixing the allowable production for the East Texas Field and allocating such production between the various properties in the field, Applicant be permitted currently to produce its fair share of the total field allow-

able which should at all events equal 14% of the total field allowable.

Respectfully submitted, Humble Oil & Refining Company, By Rex G. Baker, Attorney.

[File endorsement omitted.]

[fol. 44] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER—Filed August 19, 1939

To Said Honorable Court:

Come now the defendants, Railroad Commission of Texas, and Lon A. Smith, Ernest O. Thompson, and G. A. Sadler (who is officially known as Jerry Sadler), members of the Railroad Commission of Texas, and Gerald C. Mann, Attorney General of Texas, in their official and individual capacities, and file this their answer to the plaintiff's complaint, and for such answer say:

I

The complaint fails to state a claim against defendants, or any of them, upon which relief can be granted.

II

This court lacks jurisdiction over the subject matter of this action.

III

Defendants admit the allegations in paragraph I of the complaint, except that they do not admit that this suit is one over which this court has jurisdiction.

IV

Defendants admit that the amount in controversy exceeds $3,000.00, exclusive of interest and costs, but deny the remaining allegations in paragraph II of the plaintiff's complaint.

[fol. 45]

V

Defendants say they are informed and believe that the plaintiff owns and operates leases upon approximately

14,691 acres of land in the East Texas field, upon which approximately 2,545 producing oil wells are drilled, and that such leases comprise approximately 11.04% of all the producing acreage within the East Texas field. Defendants say that they are without knowledge or information sufficient to form a belief as to the allegations that the plaintiff's leases comprise not less than 14% of the total recoverable oil reserves in said field. Defendants say that they are without knowledge or information sufficient to form a belief as to the truth of the allegation that the plaintiff's fair share of the recoverable oil from the East Texas field is not less than 14% thereof. Defendants admit the general location of the plaintiff's leases as alleged in said complaint. Defendants deny that one well in the East Texas field is capable of efficiently draining ten (10) acres of land and say that while one well might be capable of efficiently draining ten acres under exceptional circumstances, generally waste will be prevented by drilling to a density of one well to less than ten acres. Defendants admit that the plaintiff has drilled its leases in the East Texas field down to an average density of approximately 5.8 acres per well. Defendants say that they are without knowledge or information sufficient to form a belief as to whether the plaintiff has drilled on its leases a sufficient number of wells to produce the recoverable oil under such leases and its fair share of oil in the East Texas field without physical waste.

VI

Defendants deny the allegation contained in paragraph IV of the complaint wherein it is alleged that a well drilled in the East Texas field, and operated under proper conditions of control of reservoir pressure will effectively drain [fol. 46] an area of at least ten (10) acres, and in connection herewith defendants allege that the East Texas field has been drilled to a density of one well to approximately five (5) acres, for the reason that it has been the belief and practice of the Railroad Commission that to allow the drilling of a greater number of wells than one well to ten acres will lead to a greater ultimate recovery of oil from the East Texas field, provided such wells are drilled under the supervision of the Railroad Commission of Texas, and are spaced with a fair degree of uniformity. Defendants deny that the Woodbine sand is of a uniform porosity and satura-

tion, and say that the porosity and extent of saturation vary widely throughout the field and within the same local areas. Defendants further deny that it is possible to estimate with any reasonable degree of accuracy the amount of recoverable reserves underneath any particular tract in the field without knowing the specific facts in connection with such tract. Defendants deny that the permeability throughout the field is uniform, and deny that there is intercommunication between all parts of the reservoir. Defendants deny that under the present method of proration there has been any inordinate drop in the bottom hole pressure, and say that pressures throughout the field have been kept remarkably uniform, except in the southeastern portion of the field, where the Woodbine sand is of a very low degree of permeability. Defendants admit that in general the remaining allegations contained in paragraph IV of the complaint are true.

VII

Defendants admit the allegations contained in paragraph V of the complaint, except that defendants say that the Railroad Commission has the power and duty to adjust the rights of producers by granting permits to drill wells as well as by adjusting the allowable per well.

[fol. 47] VIII

Defendants admit the promulgation of the spacing orders as alleged in paragraph VI of the complaint. Defendants say that the Railroad Commission of Texas has consistently taken the position that Rule 37 did not constitute a finding by the Railroad Commission that drilling to a greater density than one well to ten (10) acres would create waste, but the Commission, on the other hand, has taken the position that drilling of more wells than one well to ten (10) acres would lead to a greater ultimate recovery of oil from the East Texas field, and with that view, the Railroad Commission has permitted the drilling of the East Texas field down to a density of approximately one well to 5.17 acres. It has always been the position of the Railroad Commission of Texas that a person whose lease was being drained by an adjoining leaseholder could apply to the Railroad Commission of Texas for a permit to drill a well as an exception to Rule 37, and thereby prevent the drainage from his lease. Defendants say that they

do not have knowledge or information sufficient to form a belief as to the truth of the specific allegations contained in paragraph VI of the complaint with reference to the density of drilling in certain areas, because the allegations in said paragraph do not specify the areas referred to, and there is no manner in which the defendants can determine whether or not the figures stated are correct.

IX

Defendants admit the promulgation of the proration order of June 19, 1939, as alleged in paragraph VII of the complaint. Defendants admit that a marginal allowable of twenty (20) barrels per well per day is assigned to all wells which can make that amount, and that only wells having an hourly potential of more than 865 barrels are permitted to produce more than twenty (20) barrels per [fol. 48] day. Defendants admit that the program now in effect has been in effect for over six (6) years, during which time no formal protest against such method of proration has been made by the plaintiff until June 16, 1939. The Railroad Commission denies that it has any fixed intention with regard to maintaining or changing the present method of proration. Defendants deny that under the present method of proration no consideration is given to the amount of acreage in a lease, but say, on the contrary, that such consideration is given in that a person having more acres in his lease is allowed to drill more wells thereon and thereby is granted more allowable. Defendant further say that the thickness of the saturated sand, the bottom hole pressure, the positions of wells on the structure, and the amount of recoverable oil that may be in place in a lease in comparison with the recoverable oil in the field as a whole, are all given consideration in the present method of proration by the application of the potential factor in allocating production between wells in the field. Defendants say that the potential factor has a direct relation to the prevention of physical waste, and that the present method of proration has a reasonable basis in the prevention of waste, and does not amount to the proration of the field on the Commission's fiat. Defendants admit that in certain specific instances non-ratable withdrawals have occurred in the East Texas field, but defendants say that in general the present method of proration has led to a

fairly uniform rate of withdrawal. Defendants specifically deny a method of proration based on the estimated recoverable reserves beneath a lease, which did not take into consideration the number of wells drilled on the lease, would prevent non-ratable withdrawals. Defendants say that such methods of proration, as is apparently advocated by the plaintiff, would permit the withdrawal of large amounts of oil from wells spaced at wide intervals, and would per-[fol. 49] mit some wells to withdraw much larger amounts of oil than other adjoining wells, and would thereby tend to create a condition of waste, and would permit a smaller total recovery of oil from the East Texas field than is permitted under the present method of proration now in force by the Railroad Commission.

X

Defendants deny all of the allegations contained in paragraph VIII of the complaint, except that defendants admit that the plaintiff under the present order is allowed to produce about 9.932% of the field allowable, that the cost of drilling a well in the East Texas field is approximately $10,000.00, and that the estimated recoverable reserves in the East Texas field are about 2,300,000,000 barrels of oil.

XI

Defendants admit that in cases where densely drilled acreage adjoins acreage which is less densely drilled, that the owners of the less densely drilled tracts are allowed, under the present orders of the Railroad Commission, to produce less oil per acre than the owners of the more densely drilled tracts. Defendants say, however, that the owners of the less densely drilled tracts have a remedy in that they can apply to the Railroad Commission for permission to drill more wells upon their land, and thereby to bring the density of drilling on the neighboring tracts. Defendants deny that the Railroad Commission of Texas had prevented the plaintiff from recovering its fair share of oil in the East Texas field or has discriminated against plaintiff, and deny that the Commission is gratuitously taking the plaintiff's oil and giving it to other operators in the East Texas field, and deny that the order of the Commission transcends the necessities of the case and amounts to an arbitrary fiat.

[fol. 50]

XII

Defendants deny that the method of proration now in force is arbitrary, but they admit that the present method of proration has been in force for over six years. Defendants deny that plaintiff has repeatedly complained and protested against the method of allocation, and say that, on the contrary, the plaintiff has never filed any formal protest against said method of proration, until June 16, 1939. Defendants say that the application filed June 16, 1939, was filed by the plaintiff four days after the Statewide hearing, which was held on June 12, 1939, for the purpose of gathering facts with reference to the proration orders to be enforced for the months of July, August and September, 1939. Defendants say that the plaintiff did not introduce at said hearing on June 12, 1939, any facts in connection with its leases which would have justified a change in the method of proration with regard to said leases.

XIII

Defendants deny all of the allegations contained in paragraph XI of the complaint.

XIV

Defendants deny that the plaintiff is suffering, or will suffer any immediate and irreparable damage from the operation of the present proration orders, and say that the plaintiff has an adequate remedy at law by making the proper applications to the Railroad Commission of Texas for relief and by prosecuting its application which is now pending before the Commission. Defendants say that the Railroad Commission of Texas upon proper application and hearing will grant to the plaintiff all of the relief which in the lawful discretion of said Commission, plaintiff is entitled to under the law. Defendants say that such applications and hearings can be held and plaintiff can be granted the proper relief without danger of the plaintiff [fol. 51] being subjected to any penalties or forfeitures.

XV

Defendants deny that the plaintiff has suffered in the past, or that the plaintiff in the future will continue to suffer any irreparable loss and injury by reason of the

matters set forth in the complaint, and defendants deny specifically that the plaintiff is without adequate remedy at law, and say, on the contrary, that the plaintiff has a clear and adequate remedy at law, by prosecution of its application before the Railroad Commission of Texas.

Wherefore, defendants pray

(1) That the action be dismissed,

(2) That injunctive relief to plaintiff be denied,

(3) That defendants go hence with their costs without day, and

(4) For such other relief as defendants may be entitled to receive.

(S.) Gerald C. Mann, Attorney General of Texas; James P. Hart, Assistant Attorney General; D. D. Mahon, Assistant Attorney General; E. R. Simmons, Assistant Attorney General; Tom D. Rowell, Jr., Assistant Attorney General; Edgar Cale, Assistant Attorney General, Attorneys for Defendants. Address: Austin, Texas.

[fol. 52] ACKNOWLEDGEMENT OF SERVICE

Service of the foregoing answer by delivery of a copy thereof to the undersigned is acknowledged this 18th day of August, 1939.

(S.) Rex G. Baker, Attorney for Plaintiff, Humble Oil and Refining Company.

[File endorsement omitted.]

[fol. 53] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING PRELIMINARY INJUNCTION—Filed August 11, 1939

On the 10th day of August, A. D., 1939, before a Court of three judges, consisting of Holmes, Circuit Judge, Kennerly and McMillan, District Judges, convened pursuant

to prior order, came on to be heard at San Antonio, Texas, after due notice to the Governor and Attorney General of the State of Texas for the time and in the manner and form required by law, Complainant's Application for a preliminary injunction, and Respondents' Motions for More Definite Statement and for Bill of Particulars, and their Motion Raising Defenses under Rule 12-b of the Federal Rules of Civil Procedure, and came Humble Oil & Refining Company, Complainant, and announced ready to proceed on the Motion for Preliminary Injunction, and came the Railroad Commission of Texas, Lon A. Smith, Ernest O. Thompson and G. A. Sadler, members of said Commission, and Gerald C. Mann, Attorney General of Texas, in their official and individual capacities, Respondents, and announced that they were not ready to proceed except as to their preliminary motions filed herein, whereupon the Court ordered the hearing to proceed on all preliminary motions as well as the Motion for Preliminary Injunction, and pursuant [fol. 54] thereto the Court heard and considered the motions, the pleadings, the evidence, and the argument of counsel, both Complainant and Respondents, and is of the opinion that the law and the facts are with the Complainant, that the proration order of the Railroad Commission of Texas dated June 19, 1939, together with the schedule issued in connection therewith, as same is applied, construed and enforced against Complainant and its properties in the East Texas oil field is unreasonable and void as to Complainant, resulting in irreparable injury and a confiscation of Complainant's property contrary to the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, and is of the opinion that aforesaid motions of Respondents should be denied and that Complainant's application for preliminary injunction should be granted as herein decreed:

It is, Therefore, Ordered, Adjudged and Decreed that Respondents' Motion for More Definite Statement and for Bill of Particulars, and their Motion Raising Defenses under said Rule 12-b, be and they are each hereby in all things denied.

It is Further Ordered, Adjudged and Decreed that the Railroad Commission of Texas, Lon A. Smith, Ernest O. Thompson and G. A. Sadler, members of said Commission, and Gerald C. Mann, Attorney General of Texas, in their

official and individual capacities, their successors, representatives, agents, servants and employees, be and they are each hereby enjoined, until final disposition of this action upon its merits, from enforcing or attempting to enforce against Complainant said order promulgated by the Railroad Commission of Texas on June 19, 1939, and schedule in connection therewith for the East Texas field, as well as any and all other proration orders, rules, regulations and schedules which may be promulgated by it for the East Texas field which are the same or substantially the same as [fol. 55] the proration order and schedule of June 19, 1939; and the Respondents above named, and each of them, their successors, representatives, agents, servants and employees, are hereby enjoined from interfering with Complainant in daily producing from its wells in the East Texas field (except on such days as said entire field may be, by valid order of the Railroad Commission, prohibited from producing) an amount of oil not exceeding 144% of the amount now allowed to each and all of Complainant's said wells under said proration order of June 19, 1939 and the schedule issued in connection therewith for said field, and from denying Complainant tenders to move such oil and interfering in any way with the transportation and marketing of same, and from suing or from attempting otherwise to claim or collect penalties from Complainant, or from attempting in any other manner to penalize Complainant or the oil produced in accordance with this decree.

Provided, that the Railroad Commission of Texas is not restrained while said order of June 19, 1939 is in force from interfering with the production by Complainant of an amount of oil from each of its wells in said field in excess of 144% of the amount now allowed to each and all of Complainant's said wells; and

Provided Further that this decree shall in no way operate to restrain the Railroad Commission of Texas from entering, with reference to said East Texas field, any other or further orders for said field as a whole which are reasonable, and which are not the same, or substantially the same, as the order and schedule now enjoined.

This decree shall become effective upon Complainant's filing with the Clerk of this Court a bond in the penal sum of Five Thousand ($5,000.00) Dollars, conditioned as required by law, the form and sufficiency of said bond to be

approved by the Judge of the United States District Court [fol. 56] for the Western District of Texas.

All costs of this hearing are taxed against Respondents.

To all of the foregoing decree of the Court, Respondents, and each of them, in open court duly excepted.

Done at San Antonio, Texas, this 11th day of August, A. D., 1939.

(S.) E. R. Holmes, Circuit Judge; (S.) T. M. Kennerly, District Judge; (S.) Robert J. McMillan, District Judge.

Approved as to form: James P. Hart, Rex G. Baker, J. A. Rauhut.

Entered: Civ. Action Book 1, page 41.

[File endorsement omitted.]

[fol. 57] IN UNITED STATES DISTRICT COURT

[Title omitted]

SUPPLEMENTAL COMPLAINT—Filed October 3, 1939

To the Honorable Judges of said Court:

Humble Oil & Refining Company, Plaintiff in the above entitled and numbered action, with leave of court files this its Supplemental Complaint, and further complaining of the Defendants herein, says:

I

Plaintiff finds it necessary to file this Supplemental Complaint because, since the filing of the Complaint and the entry of the decree granting a preliminary injunction to Plaintiff in this action, the defendant Railroad Commission of Texas has entered new orders and a new schedule fixing and distributing the allowable production of oil in the East Texas Field, which orders and schedule are violative of said preliminary injunction and are arbitrary, unreasonable and void as to Plaintiff, all as more fully appears hereinafter.

II

This Court has jurisdiction of the persons and subject matter in this action, including the matters covered by this

Supplemental Complaint, because it is a suit civil in nature, [fol. 58] and the amount in controversy exceeds $3,000.00, exclusive of interest and costs; it involves questions arising under the Constitution of the United States, in that the orders of the Railroad Commission of Texas complained of herein, as construed, applied and enforced against the Plaintiff, are in excess of statutory authority and are in contravention of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, and are violative of the preliminary injunction heretofore granted in this action, all as more fully appears below.

III

Heretofore, under date of August 11, 1939, this court, consisting of three judges, hearing Plaintiff's motion for preliminary injunction, entered its decree in the above entitled and numbered action, which decree, among other things, found the then existing order of the Railroad Commission of Texas fixing the allowable production of oil for the East Texas Field to be unreasonable and void as to Plaintiff, and enjoined the Defendants from enforcing that order against the Plaintiff and its wells and properties in the East Texas Field. The decree provided that the Commission was not restrained, while its order of June 19, 1939, was in force, from interfering with production by Plaintiff of an amount of oil from each of its wells in the field in excess of 144% of the amount then allowed to each and all of Plaintiff's said wells, and further provided that it should in no way operate to restrain the Commission from entering, with respect to the East Texas Field, any other or further orders for the Field as a whole which are reasonable and which are not the same or substantially the same as the order and schedule enjoined. Plaintiff promptly filed [fol. 59] the bond required of it by the decree; the bond was duly approved by the court, and the decree became effective on August 12, 1939, and since such time has been and now is in full force and effect.

Under date of September 11, 1939, the Railroad Commission of Texas entered a special order fixing the allowable production of oil for the East Texas Field and allocating such production between the various wells in the field, which order will frequently hereinafter be referred to as "the proration order of September 11th", and prepared a sched-

ule prescribing the allowable production of oil for each well in the field. This order and schedule by their terms became effective September 14, were to continue in effect through October, 1939. In part the order reads as follows:

" 'Rule 23. (A) Not more than 690,000 barrels of crude oil shall be produced from the East Texas Field during any day of the effective period of this order.

(B) The total daily allowable for the field shall be distributed among the producing wells in the field on the following basis:

1. Each well capable of producing twenty (20) barrels of crude oil per day shall be allowed to produce twenty (20) barrels per day,

2. Each well incapable of producing twenty (20) barrels per day shall be allowed to produce daily that amount of oil which it is capable of producing in a 24-hour period, not in excess of twenty (20) barrels,

3. In addition to the twenty (20) barrels provided for in one (1) above, each well in the field which is capable of producing in excess of twenty (20) barrels daily shall be allowed to produce daily that proportion of the total daily allowable for the field remaining after deductions for one (1) and two (2) above have been made, that the product of such well's hourly potential by its bottom-hole pressure by the thickness of the saturated Woodbine sand underlying the well by the average number of acres per well in the lease bears to the sum of such products for all of the wells in the field.' "

This order and schedule purport to supersede the Commission's order of June 19, and the schedule issued in connec- [fol. 60] tion therewith, insofar as they fixed the allowable production of oil for the East Texas Field and allocated such production between the wells in the field. Under date of September 11, the Commission entered another special order shutting down the East Texas Field on September 12, 13, 16, 17, 23, 24 and 30, and October 1, 7, 8, 14, 15, 21, 22, 28 and 29, this order being hereinafter frequently referred to as the "shutdown order of September 11", superseding and supplanting the Statewide Shutdown Order of June 19, insofar as such order applied to the East Texas Field.

Under date of September 29, 1939, the Railroad Commission issued a general order fixing, among other things, the allowable production of oil for the East Texas Field and allocating such production between the various wells in the field, which order will hereinafter be frequently referred to as "the proration order of September 29." The schedule used in connection with the proration order of September 11 is continued in effect through October, 1939. The proration order of September 29 became effective at 7:00 a. m. October 1, 1939, and extends until 7:00 a. m. November 1, 1939. As to the East Texas Field, the proration order of September 29 reads the same as the proration order of September 11, the essential parts of which are designated as Rule 23 set out above. And likewise, under date of September 29, the Commission entered a general shutdown order, this order, among other things, shutting down the East Texas Field on October 1, 2, 7, 8, 14, 15, 21, 22, 28, 29 and 30; this order being hereinafter frequently referred to as the "statewide shutdown order of September 29", the same superseding and supplanting the shutdown order of September 11.

IV

In formulating, and for the purpose of administering and applying said proration orders of September 11, and Sep- [fol. 61] tember 29, the Defendant Railroad Commission of Texas has prepared an isopach or sand thickness map purporting to show the thickness of the original oil saturated Woodbine section in the East Texas Field; has purported to determine the number of acres of land in each producing property in the field; has prepared a pressure map purporting to show the bottom-hole pressures in all portions of the field, and has prepared a potential map purporting to show the hourly potential capacity to produce of wells in all parts of the field. The allowable production for the field is allocated among the producing wells in the field on substantially the following basis:

1. According to the Commission's schedule, there are some 25,346 producing wells in the field capable of producing 20 barrels or more per day. Each of these wells is arbitrarily allotted 20 barrels per day. The total allotted to these wells is some 506,920 barrels per day.

2. According to the Commission's schedule, there are some 556 marginal wells in the field and they are capable of

producing and are permitted to produce on the schedule some 6558 barrels of oil per day. Thus, some 513,478 barrels of oil per day are allocated under 1 and 2.

3. This leaves some 176,522 barrels per day which are prorated in accordance with the proration formula set out in the proration orders of September 11 and 29, that is, among the non-marginal wells in the field capable of producing more than 20 barrels per day.

Thus, approximately 75 per centum of the allowable production for the field is allocated among the wells in the field on a flat per well basis of 20 barrels per well per day. The allowable production for a vast majority of the wells in the field varies only slightly from 20 barrels per day; and this is true regardless of the relative number of acre feet of sand, or of the oil reserves which the several wells are sup- [fol. 62] posed to produce, or of the density of drilling or of the positions of the wells on the structure.

V

Under the proration orders of September 11 and September 29, and the schedule issued in connection therewith, some 77,000 barrels of oil per day are allocated to Plaintiff's wells in the East Texas field. This amounts approximately to 11.15 per centum of the total daily field allowable. As alleged in the Complaint in this action, and as heretofore shown, Plaintiff at the present time owns approximately 14.3 per centum of the oil in place in the East Texas field, and taking into account Plaintiff's reserves and the positions on structure of its various properties, as such positions affect the producing lives of its properties, it is entitled to produce currently approximately 14.3 per centum of the field allowable in order to produce currently its fair share of the oil. As heretofore alleged, Plaintiff's properties are located in various parts of the field, having various positions on structure. While Plaintiff, considering all of its properties, is entitled to produce currently approximately 14.3 per centum of the field allowable, the method of distribution in the field as a whole may properly provide, to a reasonable degree, for allowables for down-structure properties relatively higher than allowables for up-structure properties having similar reserves, thereby taking into account the longer lives of the up-structure properties.

Under the proration orders of September 11 and September 29, and the schedule issued in connection therewith, as they are administered and applied, Plaintiff is deprived of an opportunity to produce approximately 3.15 per centum of the allowable production of the East Texas field to which it is justly entitled. This amounts to approximately 21,750 barrels of oil per day. The present prevailing posted price for East Texas oil is $1.10 per barrel. Thus, Plaintiff is currently deprived of an opportunity to produce approxi- [fol. 63] mately Twenty-three Thousand Nine Hundred Dollars ($23,900.00) worth of oil daily which it is justly entitled to produce. Should said orders, or other orders similar thereto, be continued in effect during the productive life of the field, Plaintiff will be damaged to the extent of more than One Hundred Million Dollars ($100,000,000.00), based on the present posted price for oil in the East Texas Field.

Following are several illustrations showing in particular how the order is discriminatory and confiscatory in its operative effect upon Plaintiff:

1. Plaintiff's Mattie Killingsworth lease in the Hathaway and Ferguson Surveys in Gregg County has 20 wells on 99.7 acres having an average sand thickness of 102 feet, with 10,170 acre feet of sand having an allowable production of 860.12 barrels per day, being 8.6 barrels per acre per day or 8.5 barrels per 100-acre feet per day. Simmons and Alexander-Jackson Red Bird, Block 26, in the M. Dillard Survey in Gregg County has three wells on 1.55 acres with an average sand thickness of 30 feet of 46.5 acre feet of sand, with an allowable of 72.12 barrels per day or 46.53 barrels per acre per day or 155.1 barrels per 100 acre feet per day.

2. Plaintiff's S. S. Laird "A" lease in the I. Ruddle Survey in Rusk County has 43 wells on 230 acres with an average sand thickness of 74.3 feet or 17083 acre feet of sand with an allowable of 1407.77 barrels per day, being 6.12 barrels per acre per day, or 8.24 barrels per 100 acre feet per day. Rancho Oil Company-Bean, Crim, Block 4, lease in the M. Van Winkle Survey in Gregg County has 7 wells on 2 acres with an average sand thickness of 42 feet or 84 acre feet of sand with an allowable of 141.19 barrels per day or 70.6 barrels per acre per day or 168.1 barrels per 100 acre feet per day.

3. Plaintiff's T. M. Wooley lease in the Cordova Survey in Rusk County has 9 wells on 55 acres with an average [fol. 64] sand thickness of 58.11 feet or 3196 acre feet of sand with an allowable of 304.4 barrels per day or 5.5 barrels per acre per day or 9.52 barrels per 100 acre feet per day. Texas Jersey-Keeling "B" lease in the Cordova Survey in Rusk County has 5 wells on .58 of an acre, with a sand thickness of 75 feet or 43.5 acre feet of sand with an allowable of 101.65 barrels per day or 175.3 barrels per acre per day or 233.68 barrels per 100 acre feet per day. Plaintiff could multiply indefinitely other specific examples showing that it is similarly discriminated against under said orders and schedule as applied and enforced by the Railroad Commission.

VI

The proration orders of September 11 and September 29 and the schedule issued in connection therewith, as they are administered and applied by the defendant Commission, violate the terms of the preliminary injunction heretofore issued and are unreasonable, discriminatory, confiscatory, contrary to the due process and equal protection clauses of the 14th Amendment to the Constitution of the United States, and therefore void, among other things, for the following reasons:

First. The proration orders of September 11 and September 29 are substantially the same as the order of June 19, 1939. Both orders allocate the allowable production for the field substantially upon a per well basis. Both deny Plaintiff an opportunity to produce its fair share of the oil from the field, as stated above, and permit many operators in the field to produce far in excess of their fair shares of the oil. Both take vast quantities of oil which Plaintiff should be permitted to produce and allow other operators to produce and appropriate such oil without compensation to Plaintiff, and both make no substantial difference between the better properties and the poorer properties in the field. Thus both orders substantially continue the discriminations and inequalities in allowables as between [fol. 65] Plaintiff's properties and other properties in the field that existed under the order of June 19, 1939.

Second. The top allowable for the field is placed at approximately 690,000 barrels per day. The statewide shut-

down order of September 29 provides for a fieldwide shutdown during eleven days in October, 1939. The average daily allowable production of oil for the field during October, 1939, is approximately 445,000 barrels. Approximately 150,000 barrels of water are produced daily from the field. The total withdrawals of liquid from the field during the month of October, 1939, will average approximately 600,000 barrels per day. The field cannot produce in excess of an average of approximately 500,000 barrels of oil and water per day without causing a great amount of physical waste. Continued withdrawals at the rate of 600,000 barrels per day, or at any rate materially in excess of 500,000 barrels per day, will cause a rapid decline in reservoir pressures and will result in physical waste, for the reasons stated in paragraph IV (9) of the Complaint. The excessive withdrawals of oil and water under the proration orders of September 11 and September 29 have caused and will cause physical waste which will reduce the ultimate recovery of oil from the field, including the properties of Plaintiff, and is, therefore, confiscatory.

Third. The action of the Commission in fixing a 20 barrel minimum for each well capable of producing 20 barrels or more per day is not required by law or by the necessities of the case. The Commission having arbitrarily fixed the 20 barrel minimum, proceeded to increase the top allowable for the field to permit such a withdrawal as would cause physical waste, in order to have available a small quantity of oil to prorate to the better properties, with a view of making it appear that the allocation was not substantially [fol. 66] on a per well basis. It is possible for the Commission to write and enforce an order which will place the top allowable for the field at such figure as will not cause physical waste and at the same time to allocate the allowable production between properties in the field on a reasonable basis.

VII

After the preliminary injunction was granted in this action the defendant Railroad Commission held a hearing in Austin, Texas, commencing on August 16, 1939, and continuing for several days thereafter, on the application of the Plaintiff for an adjustment of the allowable of its wells in the East Texas field and for an order which would give it an opportunity to produce its fair share of the current

allowable production from the field. At that hearing Plaintiff introduced evidence substantially the same as the evidence which it has heretofore introduced in this action. Such evidence showed that Plaintiff is the owner of at least 14.3% of the reserves in the East Texas field. On September 11 the Railroad Commission held another hearing in Austin relating to the East Texas field. In open hearing it read a proposed order which is substantially the same as the proration orders of September 11 and September 29, and stated that it intended to promulgate such an order. Plaintiff in the open hearing protested against the entry of such an order on substantially the same grounds as are stated herein. Despite the facts shown by Plaintiff at said hearing of August 16, 1939, and despite Plaintiff's protest, the defendant Commission placed into effect its proration orders of September 11 and September 29 and the schedule in connection therewith.

Plaintiff promptly and diligently, following the entry of the proration order of September 11, tried to obtain the basic data and information used by the defendant Commission in formulating the order of September 11 and the schedule. However, the well logs used by the defendant [fol. 67] Commission in preparing the isopach map and pressure data used by it in preparing the pressure map hereinabove referred to and most, if not all, of the information used in determining the number of acres in each lease in the East Texas field, were not introduced in evidence at the hearings above referred to and have not been introduced by the defendant Commission in any hearing held by it, even though such data and information form the basis of the schedule allocating the allowable production for wells in the field. Only by persistent and diligent effort was Plaintiff able finally to obtain copies of the isopach map, the pressure map and the basic computations made by the Commission. All of such information was not obtained by plaintiff until about September 27, 1939, and until such date and until Plaintiff had an opportunity to inspect the maps, data and basic computations it was unable fully to determine its position under the said orders and schedule. However, as soon as it had obtained such basic data and checked same Plaintiff prepared and filed this Supplemental Complaint.

VIII

The Defendants have enforced the proration order of September 11 against the Plaintiff and are enforcing and, unless enjoined by this court from doing so, will continue to enforce said proration order of September 29, and the schedule issued in connection therewith, as they are interpreted and applied by the Commission, against Plaintiff in the manner, and to its immediate and irreparable injury, as alleged in Paragraph No. XII of the Complaint heretofore filed in this action. Should Plaintiff, in order to prevent irreparable injury, violate the order of the Commission by producing its fair share, the Defendants will seek to enforce against Plaintiff the penalties and forfeitures provided for in Article 6036 of the Revised Civil Statutes of Texas, as amended, unless a preliminary injunction is issued herein, followed by a permanent injunction in due course.

[fol. 68] IX

By reason of the facts alleged above and in the Complaint, Plaintiff in the past has suffered, and in the future will continue to suffer, irreparable loss and injury; is without an adequate remedy at law; and, under said orders and schedule as applied and enforced, is deprived of its property without due process of law, and is denied the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States.

Wherefore, premises considered, Plaintiff demands:

(1) That the three judge court be reconstituted and reassembled pursuant to Section 266 Judicial Code as amended, for the purpose of hearing this Supplemental Complaint and determining Plaintiff's prayer for preliminary injunction as herein prayed for, and for final disposition of this action upon its merits.

(2) That, after notice and hearing by such three judge court, a preliminary injunction be issued, and be continued in full force and effect until final disposition of this action upon its merits; that such preliminary injunction restrain Defendants, their successors, representatives, agents, servants and employees from attempting to enforce against Plaintiff, in the conduct of its producing operations upon its properties in the East Texas field hereinbefore men-

tioned, the orders, rules, regulations and schedules governing the allocation of production in the said East Texas field, especially the order of September 29, 1939, as such order is interpreted, applied and enforced, and from enforcing against Plaintiff any of the terms and provisions of similar rules, regulations, orders and schedules, also renewals and extensions, as well as any and all other similar proration orders, rules, regulations and schedules for the East Texas field having substantially the same effect; and further enjoining the Defendants, and each of them, from enforcing against Plaintiff any rules, regulations, orders and schedules governing and providing for the proration [fol. 69] of oil in the East Texas field that deny to Plaintiff, pending further orders of the court, the right to produce substantially that proportion of the total daily allowable that the oil reserves under its leases bears to the oil reserves in the East Texas field, and further enjoining Defendants from denying to Plaintiff tenders to move such oil and interfering in any way with the pipe line company or other transportation agency in transporting the oil so produced. Plaintiff also demands that Defendants be restrained from suing for penalties, or from attempting otherwise to claim or collect penalties, or from attempting in any other manner to penalize Plaintiff, or to make any claim or demand against it or against oil or gas produced by it by reason of the production of oil not in compliance with the rules, regulations, orders, schedules and acts complained of herein.

In connection herewith should the Court, in order to fix temporary allowables for Plaintiff's wells, not desire to hear evidence with respect to the oil reserves in each of its leases so that the increased allowable may be distributed substantially on the basis of the oil reserves estimated for each lease, then Plaintiff prays that the total allowable to it under the present order be increased 1,750 barrels a day, being 3.15% of the total allowable for the field as fixed by the Commission under its present order, such additional allowable to be distributed, until otherwise ordered by the court, among the wells of Plaintiff in the East Texas field by increasing the allowable of each well by 28.2% of its allowable as fixed in the existing schedule.

(3) That upon final hearing the preliminary injunction prayed for herein be made permanent and that a decree

be entered decreeing and adjudging invalid the aforesaid orders, rules, regulations and schedules of the Railroad Commission, as well as all renewal and extension orders, [fol. 70] rules, regulations and schedules substantially continuing same in effect, or any schedule or method of distribution that may be promulgated or adopted by the Commission based upon a principle similar to the above described order of September 29, 1939, as interpreted and applied, and schedules made in connection therewith as they apply to Plaintiff; that said orders, rules, regulations and schedules, as they affect Plaintiff, be set aside, vacated and annulled; and that the defendants and their successors, representatives, agents, servants and employees be permanently enjoined from enforcing such orders, regulations, rules, and schedules, and renewals and extensions thereof, or orders, rules, regulations and schedules similar thereto, against the Plaintiff, and from taking any steps whatsoever, directly or indirectly, restricting Plaintiff's rights to produce and to secure tenders for, and to transport that proportion of the total daily allowable oil for the field which will afford Plaintiff the opportunity to produce its wells in such a manner that reasonably avoidable drainage from its properties will be prevented; and that Defendants be restrained from suing for penalties, or from attempting otherwise to claim or collect penalties, or from attempting in any other manner to penalize Plaintiff, or to make any claim or demand against it or against oil or gas produced by it by reason of production of oil not in compliance with the rules, regulations, orders, schedules and acts complained of herein.

(4) For a judgment against the defendants, for costs of suit and for such other and further relief as the evidence justifies and as to the Court seems equitable in the premises.

(S.) Rex G. Baker, of Houston, Texas; (S.) R. E. Hardwicke, of Fort Worth, Texas; (S.) R. E. Seagler, (S.) Felix Raymer, (S.) Carl Illig, Jr., of Houston, Texas. Powell, Wirtz, Rauhut & Gideon, by J. A. Rauhut, of Austin, Texas. Of Counsel: E. E. Townes, of Houston, Texas.

[fols. 71-75] *Duly sworn to by L. T. Barrow. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 76] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO PLAINTIFF'S SUPPLEMENTAL COMPLAINT—Filed October 14, 1939

To Said Honorable Court:

Come now the defendants and file this answer to the plaintiff's supplemental complaint, and for such answer say:

I

The supplemental complaint fails to state a claim against defendants, or any of them, upon which relief can be granted.

II

This Court lacks jurisdiction over the subject matter of this action.

III

Defendants admit that since the filing of the complaint and the entry of the decree granting a preliminary injunction in this action, the Railroad Commission of Texas has entered new orders and a new schedule fixing and distributing the allowable production of oil in the East Texas field. Defendants say that said orders and schedule are not violative of said preliminary injunction, and are not arbitrary, unreasonable or void, and say that said orders and said schedule are substantially different from the orders enjoined by the court in said preliminary injunction, and are [fol. 77] in all respects lawful, reasonable and proper.

IV

Defendants admit that this is a suit civil in nature and that the amount in controversy exceeds Three Thousand Dollars ($3,000.00), exclusive of interest and costs, and defendants deny all of the remaining allegations in Paragraph II of the supplemental complaint.

V

Defendants admit the allegations contained in Paragraph III of the supplemental complaint. The proration order

of September 29, 1939, referred to in said Paragraph III in said complaint, constituted a re-adoption and re-promulgation by the Railroad Commission of Texas of said proration order of September 11, 1939, referred to in said supplemental complaint.

VI

Defendants admit the allegations contained in Paragraph IV of the plaintiff's supplemental complaint from the beginning of said paragraph through sub-paragraph 3 in said Paragraph IV. Defendants deny that the allowable production for a vast majority of the wells in the East Texas field varies only slightly from 20 barrels per day, and defendants say that on the contrary the allowable is distributed among the various wells in the field on the following basis, under the proration orders of September 11, 1939, and September 29, 1939:

Sub-marginal wells, receiving less than 20 barrels per day	559 wells
Wells receiving 20 to 20.99 barrels per day	5,000 wells
Wells receiving 21 to 21.99 barrels per day	2,689 wells
Wells receiving 22 to 22.99 barrels per day	1,949 wells
Wells receiving 23 to 23.99 barrels per day	1,612 wells
Wells receiving 24 to 24.99 barrels per day	1,346 wells
Wells receiving 25 to 25.99 barrels per day	1,296 wells
[fol. 78] Wells receiving 26 to 26.99 barrels per day	1,187 wells
Wells receiving 27 to 27.99 barrels per day	1,110 wells
Wells receiving 28 to 28.99 barrels per day	1,153 wells
Wells receiving 29 to 29.99 barrels per day	951 wells
Wells receiving 30 to 30.99 barrels per day	838 wells
Wells receiving 31 to 31.99 barrels per day	812 wells
Wells receiving 32 to 32.99 barrels per day	626 wells
Wells receiving 33 to 33.99 barrels per day	531 wells
Wells receiving 34 to 34.99 barrels per day	559 wells
Wells receiving 35 to 35.99 barrels per day	500 wells
Wells receiving 36 to 36.99 barrels per day	561 wells
Wells receiving 37 to 37.99 barrels per day	498 wells
Wells receiving 38 to 38.99 barrels per day	374 wells
Wells receiving 39 to 39.99 barrels per day	272 wells
Wells receiving 40 to 40.99 barrels per day	244 wells
Wells receiving 41 to 41.99 barrels per day	215 wells
Wells receiving 42 to 42.99 barrels per day	181 wells

Wells receiving 43 to 43.99 barrels per day	124 wells
Wells receiving 44 to 44.99 barrels per day	162 wells
Wells receiving 45 to 45.99 barrels per day	128 wells
Wells receiving 46 to 46.99 barrels per day	114 wells
Wells receiving 47 to 47.99 barrels per day	70 wells
Wells receiving 48 to 48.99 barrels per day	39 wells
Wells receiving 49 to 49.99 barrels per day	20 wells
Wells receiving 50 to 50.99 barrels per day	4 wells
Wells receiving 51 to 51.99 barrels per day	9 wells

The total number of wells receiving 20 barrels and above under the proration orders of September 11, 1939, and September 29, 1939, is 25,174 wells, the total number of submarginal wells, receiving less than 20 barrels per day, is 559 wells, and the total number of wells is 25,733.

[fol. 79] The allowable production for each well above 20 barrels per day is determined by the factors which are set forth in said proration order, towit, the hourly potential of the well, the bottom hole pressure of the well, the thickness of the saturated woodbine sand section underlying the well, and the average number of acres per well in the lease. By means of this formula, the number of acre feet of sand and the density of drilling on each lease are directly taken into consideration by the Railroad Commission. The oil reserves of the several wells and the position of the wells on the structure are reflected by the factors which are taken into consideration by the Railroad Commission, as above set forth. Defendants therefore specifically deny that the amount of allowable assigned to the various wells disregards the relative number of acre feet of sand, or the oil reserves which the several wells are supposed to produce, or the density of drilling, or the position of the wells on the structure. Said allowable of 20 barrels per day which is assigned to the wells in the field which are capable of making said allowable is the amount which is and has been determined by the Railroad Commission to be necessary in order to prevent the premature abandonment of wells in the East Texas field and the loss of recoverable oil which will result from such premature abandonment. Defendants say that, considering the shut-down days which have been provided for by the shut-down orders of the Railroad Commission of Texas, the marginal allowable assigned to all of the wells in the East Texas field which are capable of making that amount of oil daily is a reasonable minimum allowable

for said wells, and that the Railroad Commission of Texas cannot reduce the allowable of the wells in the East Texas field below said marginal allowable without causing the physical waste of oil and gas.

[fol. 80] Defendants further say that it is practically impossible to devise any scheme of allocation which will permit each operator in the East Texas field to recover exactly the amount of oil which originally existed in place beneath his lease, and that the Railroad Commission is not and cannot be required to devise a formula which will give to each operator the exact amount of oil beneath his lease. It is and has been the purpose of the Railroad Commission of Texas to promulgate and enforce a method of proration which will avoid and prevent the waste of oil and gas, which will prevent the confiscation of the properties of all operators, both large and small, and which will allow each operator ultimately to produce substantially the equivalent of the oil originally in place beneath his lease. The Railroad Commission of Texas in said formula adopted in said proration orders of September 11 and September 29, has considered and given weight to the characteristics and attributes of each well and tract of land, and has given due regard to the differences as to each well in productive capacity, situation on the structure, thickness, and character as to richness and yield of the underlying sands and proximity to water.

VII

Defendants admit that the approximate amount of oil which is daily allocated to the plaintiff's wells in the East Texas field under the orders of September 11th and September 29th is 77,000 barrels, and that this amounts to approximately 11.15% of the total daily field allowable. Defendants say that they are without knowledge or information sufficient to form a belief as to the truth of the plaintiff's allegation that it owns approximately 14.3% of the oil in place in the East Texas field. In this connection, defendants say that while it may be true that the plaintiff owns approximately 14.3% of the acre feet of saturated [fol. 81] oil sand within the East Texas field, it does not necessarily follow that plaintiff owns 14.3% of the recoverable oil in said field, because the amount of recoverable oil within the various portions of the East Texas field is highly variable, depending upon the percentage of porosity within the sand, the percentage of connate water, the degree of

permeability, the recovery factor, and the method of production from the various properties, and that it is impossible to determine exactly the amount of recoverable oil beneath any particular lease or leases within the East Texas field. Defendants deny that the plaintiff is deprived of the opportunity to produce currently its fair share of the oil, and defendants say that under the present orders of the Railroad Commission of Texas the plaintiff is entitled to and does produce its fair share of the oil. Defendants deny that the plaintiff is entitled to produce currently in proportion to the percentage of acre feet of saturated sand which the plaintiff owns in the East Texas field, for the reason that the plaintiff's leases are located mainly within the center or on the east side of the field, and if plaintiff were allowed at the present time to produce in proportion to its percentage of the acre of feet of saturated sand, in the East Texas field, the plaintiff would, during the producing life of its lease, produce much more than the recoverable oil which was originally in place beneath its leases. In this connection defendants say that there is a well-recognized movement of the oil in the East Texas field from the west side of said field toward the center and toward the east side of said field, and that it is necessary for the Railroad Commission, in allocating the allowable production from said East Texas field, to take into consideration the fact that the leases in the center of the field and on the east side of the field will produce a much longer period of time than the leases on the west side of the field. Since the major [fol. 82] portion of the plaintiff's leases are located in the center of the field or on the east side of the field, it is fair and proper that the leases of the plaintiff, together with the other leases in the center of the field and on the east side thereof, shall produce at the present time oil in a smaller proportion than the percentage of the acre feet of saturated oil sand beneath such leases, for the reason that such leases in the center of the field and on the east side thereof will produce a much longer period of time than the leases and wells located in the western portion of the field. Defendants deny that the plaintiff is deprived of the opportunity to produce approximately 3.15% of the allowable production of the East Texas field, and deny that the plaintiff is entitled to produce this additional amount of oil. Defendants deny that the plaintiff will be ultimately deprived of any portion of the amount of oil to which it is lawfully en-

titled during the productive life of the East Texas Oil field, and deny that the plaintiff will be damaged to any extent by the operation of the orders of the Railroad Commission of Texas. Plaintiff has at the present time 6,800 acres in the East Texas field from which it has withdrawn over 42,000,000 barrels of oil, and underneath which there is still in place as much oil as originally was in place beneath said leases. Plaintiff has greatly benefitted and will continue to benefit by the migration of oil from the west side to the East side of the field. According to the information which has been furnished to the Railroad Commission of Texas by plaintiff, although the plaintiff has produced from its leases over 130,000,000 barrels of oil, it has made a net gain by drainage to its leases in the East Texas field of over 50,000,000 barrels of oil.

Defendants say that the reasonableness and validity of the orders of the Railroad Commission of Texas are not to be judged by the carefully picked and selected examples which the plaintiff has set out in its supplemental complaint, purporting to show inequalities in the distribution of the [fol. 83] production of oil in the East Texas field, but that the validity of said orders must be judged by the application of said orders to the field as a whole. Defendants further say that even the isolated examples which have been chosen by the plaintiff in its supplemental complaint do not demonstrate that the Railroad Commission of Texas has acted unreasonably in distributing the allowable in the East Texas field. In the first example given by the plaintiff in its supplemental complaint, each of the wells on the plaintiff's Mattie Killingsworth lease in the Hathaway and Ferguson surveys in Gregg County is entitled to produce approximately 43 barrels of oil per day, while each of the wells on the Simmons and Alexander-Jackson Red Bird, Lot 26, in the M. Dillard survey in Gregg County, is allowed to produce only approximately 24 barrels of oil per day. In connection with this example, the defendants further say that the plaintiff's lease referred to is located in the center of the field, whereas the Simmons and Alexander-Jackson Red Bird lease is located on the west side of the field, and that the plaintiff's lease will produce for a much longer period of time than the Simmons and Alexander-Jackson Red Bird lease. Defendants further say that in the second example which has been picked by the plaintiff, the plaintiff's wells located on its S. S. Laird "A" lease, the I.

Ruddle survey, in Gregg County, Texas, is allowed to produce approximately 32.7 barrels per day, whereas each of the wells located on the Rancho Oil Company's Bean Crim lease in the M. Van Winkle survey in Gregg County, Texas, is allowed to produce only approximately 20.1 barrels of oil per day. In the third example which has been picked by the plaintiff, each of its wells on its P. M. Wooley lease in the Cordova survey in Ruck County is given a daily allowable production of approximately 33.8 barrels per day, whereas each of the wells on the Texas Jersey-Keeling "B" lease in the Cordova survey in Rusk County, Texas, is al-[fol. 84] lowed to produce only 20.3 barrels of oil per day. Defendants say that even these examples, which have been carefully chosen by the plaintiff with the purpose in view of attempting to show a discrimination by the Railroad Commission and a failure by the Commission to consider the proper factors in distributing the daily allowable in the East Texas field, show clearly that the Commission has distinguished between the better and the poorer wells, and that it has assigned to the better properties substantially more oil per day than it has assigned to the poorer properties. Defendants further say that when the whole field is considered, rather than specific examples picked by the plaintiff for the purpose of overthrowing the proration orders of the Railroad Commission, it is evident that the orders of the Railroad Commission are fair and have been entered by the Commission with the purpose in view, first, of preventing the physical waste of oil and gas, and second, of distributing the daily allowable production giving due and proper consideration to the factors which the courts have held to be necessary to be considered in distributing the allowable production among the various properties in the field.

VIII

Defendants deny that the proration orders of September 11th and September 29th, or either of them, as administered and applied by the defendant Railroad Commission of Texas, violate the terms of the preliminary injunction heretofore issued by this court, and defendants deny that said orders or either of them are unreasonable, discriminatory, confiscatory, contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States, or void. Defendants deny that the proration orders of

September 11th and September 29th, or either of them, are substantially the same as the order of June 19, 1939. Defendants deny that the present orders of the Railroad Com-
[fol. 85] mission prorate the allowable production of the East Texas field substantially upon a per well basis. Defendants deny that the present orders of the Railroad Commission of Texas deprive the plaintiff of an opportunity to produce its fair share of the oil from the East Texas field and deny that the present orders will permit many operators in the field to produce far in excess of their fair shares of the oil. Defendants deny that the present orders of the Railroad Commission of Texas take oil from the plaintiff and permit it to be produced by other operators without compensation to the plaintiff. Defendants deny that the present orders make no substantial difference between the better properties and the poorer properties in the field, and on the contrary, defendants say that the present orders of the Railroad Commission give due recognition to the better properties and give to said properties a much greater allowable than are assigned to the poorer properties. Defendants deny that the discriminations and inequalities, if any, which existed under the order of June 19, 1939, are continued under the present orders of the Railroad Commission. Defendants admit that the top allowable for the field is placed at approximately 690,000 barrels per day. Defendants further admit that the average daily allowable of oil for the field during October, 1939, considering the 11 shut-down days, is approximately 445,000 barrels. Defendants further admit that approximately 150,000 barrels of water are produced daily from the East Texas field at the present time, and in connection herewith the defendants say that they have held many hearings for the purpose of determining the proper disposal of said salt water and that there has already been started in the East Texas field a movement, which has received the support of the Railroad Commission of Texas, to provide for the re-injection into the woodbine sand of the water produced from said field, and said water
[fol. 86] is already being re-injected into said reservoir in substantial quantities. The Railroad Commission of Texas is now considering orders to be entered requiring the re-injection of water to be produced from said field, and is making every reasonable effort to determine the proper means that should be followed in order to require said

water to be returned to the reservoir. It is the purpose and object of the Railroad Commission to require eventually that as much as is practical of said water shall be re-injected into the reservoir, as soon as said re-injection is practically feasible, and it may be reasonably expected that the amount of water produced from said field above the amount which is re-injected into the reservoir, will be decreased to the point where such net production of water will be negligible. Defendants deny that the rate of production permitted by the present orders of the Railroad Commission of Texas will cause a rapid decrease in the bottom hole pressure and deny that said orders are causing or will cause physical waste. Defendants further deny that the said orders will reduce the ultimate recovery of oil from the field, and deny that said order is in any manner confiscatory toward the properties of the plaintiff. Defendants further say that under the present orders of the Railroad Commission of Texas the largest production is permitted from the portions of the field which have high pressures and high permeability and high potentials, and that such portions of the field can properly produce greater amounts of oil without a reduction in the bottom hole pressure and without any resultant waste. Defendants further say that said increase in the top allowable of the East Texas field was in part due to the holding by Judge Robert J. McMillan of this Court in the case of Rowan & Nichols Oil Company vs. Railroad Commission of Texas, wherein the said Judge held in effect that the total field allowable for the East Texas field was unreasonably low [fol. 87] and could be increased without causing physical waste and that the duty rested upon the Railroad Commission of Texas to increase the top allowable in order to permit a larger spread between the poorer and the better wells in said field. Defendants deny that the action of the Railroad Commission in fixing a 20 barrel minimum is unreasonable or beyond the necessities of the case or is arbitrary, and on the contrary, the defendants say that the action of the Commission in fixing said minimum allowable is reasonable, lawful and necessary. Defendants deny that there is only a small quantity of oil to prorate to the better properties and say that on the contrary the amount of oil which is prorated to the better properties is approximately 176,000 barrels daily. Defendants deny that the present

order is on substantially a per well basis, and say that the present method of allocation gives a substantially larger amount of oil to the better wells and to the better properties, as hereinbefore more specifically set out.

Defendants say that under the marginal well statute of Texas, Article 6049b of Vernon's Annotated Civil Statutes, the Railroad Commission of Texas is prohibited from cutting the daily production of pumping oil wells below 20 barrels per day in the East Texas field, where such wells are incapable of making more than 20 barrels per day. Defendants further say that they cannot cut down the production from better pumping wells and from flowing wells below 20 barrels per day without causing the premature abandonment of said wells, and without discriminating against said wells in favor of the wells which come within the terms of the marginal well statute. Defendants say that the present orders of the Railroad Commission of Texas place the top allowable for the field at a figure which will not cause physical waste and at the same time allocate the allowable production between the properties in the field on a reasonable basis.

[fol. 88] IX

Defendants admit that after the preliminary injunction was granted in this action the defendant, Railroad Commission of Texas, held a hearing at Austin, Texas on the application of Humble Oil & Refining Company for an adjustment in its allowable, and that said hearing continued for six days, and that a voluminous record was made in said hearing. Defendants admit that at said hearing the plaintiff introduced evidence to the effect that it owned approximately 14.3% of the acre feet of saturated sand in said East Texas field, but defendants deny that the plaintiff established by evidence that it owns 14.3% of the recoverable reserves of oil in the East Texas field. Defendants say that the evidence introduced in said hearing showed that the amount of oil in the various portions of the field varied considerably, and that other factors in addition to the acre feet of saturated oil sand would have to be considered by the Railroad Commission in determining the amount of recoverable reserve and in allocating the production among the various wells in the field. Defendants further admit that on September 11, 1939, the Rail-

-road Commission held another hearing in Austin relating to the East Texas field, and defendants say that at said hearing on September 11, 1939, all of the record which had been made in said hearing on the application of the plaintiff for an increase in its allowable was introduced in evidence. Defendants admit that subsequent to said hearing on September 11, 1939, the orders of September 11, 1939 and September 29, 1939, were promulgated, as hereinbefore set forth. Defendants further say that the schedules and the maps which were prepared by the Railroad Commission of Texas in putting said order into effect were made available to the plaintiff and to all other interested persons as soon as possible after said schedules and maps were [fol. 89] prepared by the Railroad Commission of Texas. With reference to the properties of the plaintiff, the information furnished by the plaintiff with reference to its properties in the East Texas field, was used as the basic data in the preparation of the schedules and in assigning the allowable to the plaintiff's wells in said field. Defendants say that they are without knowledge or information sufficient to form a belief as to the truth of the plaintiff's allegation that it did not determine its position under said orders and schedule until September 27, 1939.

X

Defendants admit the allegations contained in Paragraph VIII of the plaintiff's supplemental complaint, except that defendants deny that the enforcement of said orders as against the plaintiff will injure or damage the plaintiff in any manner whatsoever.

XI

Defendants deny all of the allegations contained in Paragraph IX of the plaintiff's supplemental complaint.

XII

Defendants say that the plaintiff's prayer for temporary relief is without equity and should be denied for the reason that the orders complained of are lawful, reasonable and necessary, and that they have a direct and reasonable relation to the performance by the Railroad Commission of Texas of its statutory duties to provide for the conservation of oil and gas, that the plaintiff is not being injured or

damaged by said orders and will not be injured or damaged in the future, and that the granting of a temporary injunction by this Honorable Court against the enforcement of the said orders prior to a full and complete hearing upon the facts, with reference to the operation of said orders, will cause serious and irreparable injury to many [fol. 90] other operators in the East Texas field, and will not preserve but will destroy the status quo, and will cause the practical destruction of the proration orders of the Railroad Commission pertaining to the whole East Texas field. In connection herewith, defendants say that the plaintiff is attempting by securing a temporary injunction in this action to secure for itself approximately 21,750 barrels of oil in addition to the amount of oil which it is now allowed to produce under the present orders of the Railroad Commission of Texas, and that to allow the plaintiff to produce this additional amount of oil will cause drainage to the plaintiff's property from the property of other persons who are not made parties to this lawsuit by the plaintiff and who have not had and will not have an opportunity to present to the court at a hearing on a temporary injunction the facts in connection with their rights to produce the fair share of oil from the East Texas field. Defendants further say that the plaintiff, while attacking the top allowable for the East Texas field as being unreasonably high and as being productive of waste, is at the same time asking this court to give it an increase in its daily production of approximately 21,750 barrels per day, which will increase the total field allowable by said amount, and, according to the allegations in said supplemental complaint, will result in additional waste in the production of oil from said field. Defendants further say that a flat increase of 28.2% in the allowable on each of the wells of the plaintiff in said field will be productive of waste and will lead to great inequity. Plaintiff is attacking the present order of the Railroad Commission on the ground that it distributes the allowable in the East Texas field on an improper basis, and a flat increase in the plaintiff's allowable would not remedy any of said alleged defects in the order of the Railroad Commission, but would merely ag- [fol. 91] gravate and exaggerate the alleged defects which plaintiff claims exist in said order.

Defendants further deny that the plaintiff is without adequate remedy at law, and say that the plaintiff has a plain and adequate remedy at law which it has not exhausted, in that the plaintiff can apply to the Railroad Commission for permission to drill additional wells on its lease, if, as plaintiff contends, it is not receiving its fair share of the allowable production from said field. Defendants say that on August 16, 1939, the Railroad Commission of Texas set for hearing the matter of allowing to plaintiff permits to drill additional wells on its leases in the East Texas field, and on said date and on August 23, 1939, the plaintiff stated to the Railroad Commission that it did not desire to have a hearing on said matter and that it did not desire to receive any additional permits to drill wells in the East Texas field. Defendants say that the East Texas field has been drilled from the beginning under the provisions of Rule 37, which provides in effect that persons who are not receiving their fair share of the oil from the East Texas field can secure permits to drill additional wells in order to prevent confiscation of property, and the plaintiff has a plain remedy, and means of securing an additional allowable by applying to the Railroad Commission of Texas for permits to drill additional wells and thereby to secure the additional allowable which will be assigned to said wells.

Wherefore, defendants pray that the plaintiff be denied all relief, that defendants go hence with their costs without day, and for such other relief as to the Court seems proper in the premises.

[fol. 92] (s) Gerald C. Mann, Attorney General of of Texas; James P. Hart, D. D. Mahon, Edgar Cale, E. R. Simmons, Tom D. Rowell, Jr., Austin, Texas, Assistant Attorneys General; Attorneys for Defendants.

Copies of this answer were served upon attorneys for the plaintiff in the Court Room of the United States District Court at Houston, Texas, on October 12, 1939.

(s) James P. Hart, Attorney for defendants.

Duly sworn to by Lon A. Smith. Jurat omitted in printing.

[fol. 93] [File endorsement omitted.]

[fol. 94] IN UNITED STATES DISTRICT COURT

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW IN CONNECTION WITH COURT'S ORDER DENYING PLAINTIFF A SECOND INTERLOCUTORY INJUNCTION—Filed November 10, 1939

By the Court:

This suit was brought on July 26th, 1939, by the Humble Oil and Refining Co., against the Railroad Commission of Texas, its members and the Attorney General of Texas to enjoin them from enforcing an order of June 19, fixing the amount of oil allowed to be produced by each well in the East Texas Oil Field.

A hearing was had before a statutory court of three judges, composed of Holmes, circuit judge, and McMillan and Kennerly, district judges. A decree was entered on August 11, 1939, granting an interlocutory injunction as prayed for, upon plaintiff giving bond in the sum of $5,000.00.

On October 3d, 1939, plaintiff filed a supplemental complaint alleging that an additional order of the Railroad Commission issued on September 29th, 1939, was violative of the interlocutory injunction, was unreasonable, arbitrary and confiscatory and deprived complainant of its property without due process of law. Owing to the serious illness of district judge McMillan and conflicting judicial [fol. 95] engagements of circuit judge Holmes, a statutory court of three judges composed of Foster, circuit judge, and Atwell and Kennerly, district judges, both of whom had been assigned to the Western District of Texas, was assembled and a hearing was had on October 12, 1939. Numerous affidavits and maps were introduced in evidence and the case was argued and submitted.

The affidavits tend to show many complicated facts pro and con as to the discretion exercised by the Commission in entering the order of September 29th, 1939. It is unnecessary to consider and analyze them for the purpose of this hearing. There is no substantial difference between the parties as to the material facts, which we find as follows.

The East Texas Oil Field has 133,000 producing acres. Plaintiff has producing leases covering 14,691 acres. The

oil bearing sand varies in thickness throughout the field. There are approximately 25,000 wells in the field. The order of June 19, 1939 fixed the top daily allowable at 520,000 barrels and permitted each well to produce only 2.32 per cent of its hourly potential production. However, some 19,000 wells, not capable of producing in excess of 20 barrels a day were allowed to produce 20 barrels per day or all they could to that limit, regardless of whether their allowable measured by the percentage of their hourly potential production would reach that figure. Other wells were held to the 2.32 per cent of their hourly potential. Under this order no well was allowed to produce more than 26 barrels per day.

The injunction heretofore issued enjoined the defendants from enforcing against plaintiff the order of June 19, 1939, and any other orders substantially the same; and from interfering with plaintiff in producing daily 144 per cent of the amount of oil plaintiff was allowed to produce from its wells under the order. Necessarily, this percentage was [fol. 96] intended to be based upon an allowable of 520,000 barrels a day.

The order of September 29th provides as follows:

"Rule 23. (a) Not more than 690,000 barrels of crude oil shall be produced from the East Texas Field during any day of the effective period of this Order.

"(b) The total daily allowable for the field shall be distributed among the producing wells in the field on the following basis:

"1. Each well capable of producing twenty (20) barrels of crude oil per day shall be allowed to produce twenty (20) barrels per day.

"2. Each well incapable of producing twenty (20) barrels per day shall be allowed to produce daily that amount of oil which it is capable of producing in a 24-hour period, not in excess of twenty (20) barrels.

"3. In addition to the twenty (20) barrels provided for in one (1) above, each well in the field which is capable of producing in excess of twenty (20) barrels daily shall be allowed to produce daily that proportion of the total daily allowable for the field remaining after deductions for one (1) and two (2) above have been made, that the product of such well's hourly potential by its bottom-hole pressure by the thickness of the saturated Woodbine Sand under-

lying the well by the average number of acres per well in the lease bears to the sum of such products for all of the wells in the field."

Under the provisions of the order of September 29th plaintiff was allowed to produce about 11.15 per cent of 690,000 barrels, which would amount to about 148 per cent of 520,000. This would be approximately 76,960 barrels daily under the new order as against 74,880 barrels under the old order, an increase of production of about 2000 barrels daily. The daily average production from the field is materially reduced by the shutting down of the wells under orders of the Commission on certain days in each month. But the figures retain substantially the same comparative value.

[fol. 97] CONCLUSIONS OF LAW

Under the law of Texas the holder of an oil lease is the owner of the oil in place under the lease and is entitled to produce his fair share of the oil drawn from the common reservoir. The Railroad Commission has authority to prorate the amount each well shall be allowed to produce but its orders must be reasonable and fair. The findings of fact by the Commission are not conclusive and any party in interest has the right to appeal to the courts for relief. However, orders of the Commission, promulgated after a hearing, are entitled to weight prima facie. Usually, courts do not permanently set them aside unless convinced they are invalid, after a hearing on the merits. In this case the interlocutory injunction issued to prevent irreparable loss until a hearing could be had on the merits and final decree entered. It is apparent from the above facts that the order of September 29th does not deprive plaintiff of the benefit of the interlocutory injunction heretofore issued. There is no occasion to enter another interlocutory decree at this time.

The application should therefore be denied.

[File endorsement omitted.]

[fols. 98-100] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER OF THREE-JUDGE COURT DENYING APPLICATION FOR SECOND INTERLOCUTORY INJUNCTION—Filed November 10, 1939

For the written reasons on file it is Ordered, Adjudged and Decreed that the application for a second interlocutory injunction herein be Denied.

Rufus E. Foster, U. S. Circuit Judge; Wm. H. Atwell, U. S. District Judge.

In signing this Order, I make this comment. I do not wholly agree with the written reasons filed, but think the Second Interlocutory Injunction should be denied.

T. M. Kennerly, U. S. District Judge.

[File endorsement omitted.]

[fol. 101] IN UNITED STATES DISTRICT COURT IN AND FOR THE WESTERN DISTRICT OF TEXAS

No. 31. Civil

HUMBLE OIL & REFINING CO.,

vs.

RAILROAD COMMISSION OF TEXAS, et al.

Statement of Evidence

Be it Remembered that on this Tuesday, February 13th, 1940, the above entitled and numbered cause came on for trial before the Honorable Samuel H. Sibley, United States Circuit Judge, Fifth Circuit, Honorable Robert J. McMillan, United States District Judge, Western District of Texas, and Honorable James V. Allred, United States District Judge, Southern District of Texas, at Austin, Texas, and continued from day to day to its conclusion; plaintiff being represented by Mr. Rex G. Baker, of Houston, Texas, Mr. R. E. Hardwicke, of Fort Worth, Texas, and Mr. John A. Rauhut, of Austin, Texas; and the defendants being repre-

sented by Mr. James P. Hart, Mr. E. R. Simmons, and Mr. Edgar Cale, Assistant Attorney Generals, of Austin, Texas; and during said trial the following testimony was introduced and proceedings had in connection therewith:

[fol. 102] PRELIMINARY DISCUSSION

Judge Sibley: Gentlemen, there seem to be five cases for this Three Judge Court to deal with. I understand that possibly three of them can be handled together. I will inquire about that first; they are the cases of Humble Oil & Refining Company against the Railroad Commission, F. W. Fischer vs. Lon A. Smith and others, and the other is the Rowan & Nichols Oil Company vs. the Railroad Commission. Are they all ready, first?

Mr. Hart: If the Court please, we represent the defendants in all of those cases—the Attorney General and the Railroad Commission, and I might state on behalf of the defendants in all three of those cases that we are willing to agree to the suggestion made yesterday by Judge McMillan that a joint trial be had of all three cases.

Judge Sibley: Now, you don't wish to consolidate them, but you wish to try them together, and let separate judgments be entered in them, I suppose.

Mr. Hart: Yes, sir, that is correct. All evidence introduced, as I understand it, can be used for or against all of the parties, unless it is specially limited at the time it is introduced.

Judge Sibley: What do the plaintiffs say about that?

Mr. Baker: Your Honor, we represent the Humble and we have no objection to hearing the three cases all along together, but I raised the point yesterday whether or not one of the plaintiffs would have any right to question the witnesses of any other plaintiff inasmuch as there is no controversy, as I understand it, between the several parties; otherwise, why, the cases could be carried along right together.

[fol. 103] Judge Sibley: Well, what say the representatives of the other two parties?

Mr. Fischer: I happen to be one of the plaintiffs that Mr. Baker is talking about. Now, it is agreeable with me to try my case along with the Rowan & Nichols and the Humble; I think it ought to be tried that way, because the evidence offered by one will be applicable to the contention of all of us

in many respects; but I think if a witness for the Humble or Rowan & Nichols has testified to some matters that I desire a little elucidation upon that point, that I am entitled to ask him a question.

Judge Sibley: I think that is undoubtedly true, sir.

Mr. Fischer: Yes, sir, it is agreeable to me.

Mr. Moody: It is agreeable with Rowan & Nichols to try its case along with the other two cases. I have no knowledge as to what amount of testimony the Humble Oil Company, for example, will want to introduce, or Mr. Fischer; and, obviously, I take it there is a lot of the testimony that Mr. Fischer might introduce that would be immaterial and irrelevant so far as any questions involved in the Rowan-Nichols case are concerned. I don't know—so far as testimony that bears on the general nature or conditions of the East Texas Field, I think the testimony that Mr. Fischer might introduce or that the Humble might introduce or that the State might introduce would be substantially the same testimony as Rowan & Nichols would introduce; but there—the Humble owns quite a large acreage in the East Texas Field, and Mr. Fischer owns quite a number of tracts in the East Texas Field and Rowan & Nichols has only one tract of [fol. 104] land of twenty-eight acres involved in this case.

Judge Sibley: Do you expect to use oral testimony?

Mr. Moody: Yes, sir, we are pressing our application for an interlocutory injunction and we will introduce some testimony. We would like the privilege of indicating to the Court after the Humble Company has completed the introduction of its testimony that we want the testimony of witnesses A and B and exhibits so and so considered, in connection with the Rowan & Nichols case, and while we will be having a joint trial and not a consolidation——

Judge Sibley: Well, we could hear the Humble-Nichols testimony first and then let you supplement it if you so desire.

Mr. Moody: Yes, sir.

Judge McMillan: Governor Moody, are you going to press your case for final judgment?

Mr. Moody: Yes, sir. We are going to press our case for interlocutory injunction.

Judge McMillan: Is that true in the Rowan-Nichols case?

Mr. Moody: Yes, sir, it is.

Judge McMillan: You retain the application for interlocutory injunction so as to hold the three Judges?

Mr. Moody: Yes, sir.

Judge McMillan: But want the case finally settled, too?

Mr. Moody: Yes, sir; yes, sir.

Mr. Hart: Now, there may be a great deal of evidence introduced by the Humble Company, for example with reference to the general conditions in the field or other evi- [fol. 105] dence that we believe would be relevant to the Rowan-Nichols case. Now, are we going to have to get up and make a statement——

Judge Sibley: My understanding was that all of the evidence offered would be considered as available in all three cases, but in making up a record of appeal it might be decided to eliminate some evidence as having no connection with some particular case.

Mr. Hart: I see, but for the purpose of this trial, it will be considered that any evidence introduced by any party may be considered as relevant for or against any other party.

Judge Sibley: That is my understanding. Is that right?

Mr. Moody: That is my understanding, Your Honor. I thought the Humble, being the oldest case, it would proceed to introduce its testimony first. I just presumed that to be the case. Now my understanding of the matter is, and I may be in error about it, that the Humble has got a large—well, I know the Humble has a large acreage in the field and would like to introduce testimony about various leases that are far removed and have no relation to the Rowan-Nichols case. So far as the Rowan-Nichols case is concerned, I don't think we will have a great deal of testimony, and I thought——

Judge Allred: Your opponent is the Commission, of course?

Mr. Moody: Yes, sir.

Judge Allred: And when you come to present your case, [fol. 106] there is a great mass of it that you don't wish considered in the case and will——

Mr. Moody: Yes, sir.

Judge Allred: ——say so, and if the Commission wants to put in any they can do it.

Mr. Moody: Yes, sir, that is satisfactory.

Mr. Baker: I would like to call the Court's attention to this matter, as I understand his pleadings, Mr. Fischer's case is rested upon an entirely different principle from that upon which the Humble and Rowan & Nichols rest

their case, and, therefore, we would not wish to be bound by the evidence that Mr. Fischer introduces; in other words, we don't want to make that our evidence. I would like to make that clear, if you please.

Judge Sibley: All right. Now, you see, gentlemen, we will be pressed for time and so we will try to get along as best we can. You may proceed now for the Humble Company.

[fol. 107] PLAINTIFF'S EVIDENCE

I. L. SORENSON, a witness produced by the Plaintiff, having been first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Baker:

Q. Please state your name.
A. I. L. Sorenson.
Q. Where do you live?
A. Houston.
Q. What is your occupation?
A. Geologist.
Q. What is your employment at this time?
A. Employed by the Humble Oil & Refining Company.
Q. As a geologist?
A. Yes, sir.
Q. Will you give your educational qualifications, please?
A. I have a B. A. degree from the University of Iowa, with a Major in geology.
Q. Do you belong to any geological society?
A. The American Association of Petroleum Geologists.
Q. How long have you been employed as a geologist by Humble Oil & Refining Company?
A. Since 1925.
Q. What is the nature of your geological experience?
A. I have had geological experience in the various fields of Arkansas, Louisiana, and Texas.
Q. Have you made a study in particular of the East Texas Field?
[fol. 108] A. Yes, sir. I served as production geologist in East Texas for the Humble from February, 1931, until January 1, 1939.

Q. While you were doing that work, did you study conditions in the field?

A. Yes, sir.

Q. In what way did you study conditions in the field?

A. The drilling of our properties in the field, and properties adjacent to us throughout the entire East Texas field.

Q. Do you mean to say you have kept up with the drilling operations on the Humble Properties and on adjacent property?

A. Drilling and development on all of our properties in the field.

Q. Just what was the nature of your duties?

A. To assist the production department in the drilling of wells, completing of wells, depth of penetration of the sand, casing points, tubing points, and production methods.

Q. Did you inform yourself concerning the producing sands and the producing sand section?

A. Yes, sir.

Q. How did you do that?

A. By coring the sand, by drillers logs, by cuttings, and by electrical logs.

Q. Did you study the water conditions in the field?

A. Yes, sir.

Q. Did you make a study of the character of the oil in the sands and its habits?

A. Yes, sir.

Q. Did you study the general reservoir conditions in the field?

A. Yes, sir.

Q. I will ask you whether you have had access to practically all of the data that Humble Oil & Refining Company [fol. 109] has relating to the East Texas Field, geologic data?

A. Yes, sir.

Q. Did you study that data?

A. Yes, sir.

Q. You feel you are thoroughly familiar with the East Texas Field, do you or not?

A. Yes, sir.

Mr. Baker: Your Honor, at this point we would like to introduce several exhibits. The first exhibit that I would like to introduce is a very large map of the East Texas Field. This, I suppose, will be marked Humble's Exhibit

No. 1. It is drawn to a scale of one inch to one thousand feet. It is in three sections, but I introduce this map for the purpose of showing the extent of the field, the location of the Humble's properties, these properties being shaded in yellow, and the distribution of those properties throughout the field, and particularly to show also the densities, the varying densities to which the field has been drilled.

Judge Sibley: Did this man make it, or who vouches for it?

By Mr. Baker:

Q. How was this map compiled?

A. Compiled by our engineering department in conjunction with our geological department.

Q. You are familiar with the map?

A. Yes, sir.

Q. Can you state it fairly represents conditions in the field?

A. Yes, sir.

Q. This map, of course, will show the varying densities there at a glance.

[fol. 110] Judge Sibley: Any objection to the map, gentlemen?

Mr. Hart: The Commission has no objection to the map.

Judge Sibley: Well, the map is in. I think you have got the substance on these pictures.

Mr. Baker: Yes, sir.

Judge Sibley: We will look at the pictures for the present. That is in the record.

(Thereupon said map was admitted in evidence as Humble's Exhibit No. 1.)

By Mr. Baker:

Q. All right, the next exhibit plaintiff wishes to introduce is this map here styled "Index Map", and we introduce that as Plaintiff's Exhibit No. 2.

(Thereupon said map was admitted in evidence as Humble's Exhibit No. 2.)

By Mr. Baker:

Q. Mr. Sorenson, would you mind stepping over here, please, and explaining this map to the Court?

Judge Sibley: Did you make it, Mr. Sorenson?

A. No, sir, this is a reduction of a 1,000 foot map. This is a map of the East Texas field on the scale of one inch to three thousand feet, and shows the outlines of the field, the producing areas, the location of the wells, and the Humble leases shaded in yellow. It is divided into three parts, the usual division of the field, Henderson District, the Kilgore District, and the part North of the river, the Longview District.

Q. That is extending from North to South. You have some lines here marked "AA", "BB", "CC", and so forth. Will you state the significance of those lines?

A. They represent the course of the cross sections drawn across the producing horizon.

[fol. 111] Q. Those cross sections that will be introduced as Exhibit 5, perhaps?

A. Yes, sir.

Q. At least an exhibit that we will soon introduce that indicates the various locations of those cross sections?

A. Yes, sir.

Q. Is there one running North and South?

A. There is also a North-South cross section extending through the center of the field from the North end to the South end.

Mr. Baker: We wish to introduce another map of the East Texas field, which would be Exhibit No. 3, and it is named here "Contour, East Texas field, Contoured on Top of Woodbine sand".

(Thereupon said map was admitted in evidence as Humble's Exhibit No. 3.)

Q. Will you explain this map, please?

A. This map is contoured on the top of the woodbine sand on 40 foot contours.

Q. What does it show with respect to the field?

A. It shows the structure position of the top of the sand.

Q. Does it also show the outlines of the field, and the location of wells and the location of the Plaintiff's properties?

A. Yes, sir.

Q. Does it show anything else? That is about what is shows, is it?

A. That is what it shows.

Mr. Baker: We wish to introduce another map which is—has already been introduced in evidence by the Commission. I have forgotten the exhibit number.

[fol. 112] Judge Sibley: Let's give it a new number for this trial, because this applies to another case also.

Mr. Baker: This is an isopach map of the East Texas field, or a sand thickness map that was introduce- by the Railroad Commission in the Houston hearing, was it not?

Mr. Hart: I don't recall whether it was introduced or not. I don't think I will have any objection to you introducing it. I think it was introduced in Houston at the hearing there.

Mr. Baker: Mr. Sorenson, will you——

Mr. Moody: What number are you giving that?

Mr. Baker: It is the Commission's Exhibit 1, but we could identify it as our Exhibit No. 4.

Mr. Hart: We haven't offered it at this hearing yet. Are you offering it?

Mr. Baker: Yes, sir, we offer it, if you don't

(Thereupon said map was admitted in evidence as Humble's Exhibit No. 4.)

Q. Will you explain that?

A. This isopach map also shows an outline of the field, the location of the wells and leases, and is contoured on the thickness of the sand, the net effective sand throughout the field.

Q. That doesn't purport to show the entire oil bearing section, but the net effective oil sand; is that it?

A. Yes, sir.

Q. What interval is it contoured on?

A. Ten feet.

Q. Will you state what interval is allowed to the contour that embraces the edges of the field?

[fol. 113] A. All wells falling within the limits of the ten foot contour are allowed ten feet.

Q. Indicated as having ten feet. Do they actually have ten feet?

A. No, sir, the maximum would be ten feet down to zero.

Q. What would the average property be?

A. 5 feet.

Q. Approximately 5 feet. In that respect, the contour map, does it or not represent the actual conditions with respect to sand thickness in the field?

A. It represents actual conditions except for that peripheral maximum where ten feet is granted.

Q. If you were to take actual conditions, there would have to be an adjustment in that maximum from ten feet down to nothing?

A. Yes, sir.

Q. Would that be an average of about five feet?

A. An average of five feet.

Q. I wish to introduce another map, which we will designate as Plaintiff's Exhibit No. 5.

Judge McMillan: Can you pull that out?

(Thereupon, said map was admitted in evidence as Plaintiff's Exhibit No. 5.)

By Mr. Baker:

Q. What is this map, Mr. Sorenson?

A. This is another 3,000 foot map of the field showing limits of the field, the wells and leases and depleted areas of the field, indicated in red. Those are areas of wells producing for a time and have now been abandoned, both on the east and on the west.

Q. And on the north and on the south, all around the field?

[fol. 114] A. All around the field. Also, the green area is the area of water encroachment. Those wells have been affected by bottom hole water.

Q. Are all of them drowned out, or are they now producing?

A. They are now producing, but at one time or another they have produced salt water.

Q. Are the Humble leases shown on that map?

A. Yes, sir, shown in yellow.

Q. What is the significance of this gray area in the southeastern part of the field?

A. There is an area where the sand isn't as porous and permeable as the other parts of the field. There is more shale in sections.

Q. What is the significance of the two lines running in a northerly and southerly direction to the middle of the field?

A. That is the easternmost limit of the bottom hole water.

Q. Which is it originally?

A. The western end, and the eastern land shows the abandonment.

Q. As of what date?

A. January 1, 1938.

Q. And the westerly one was where it was originally?

A. The original line.

Q. Mr. Sorenson, I will ask you whether or not all of these maps introduced in your opinion fairly represent actual conditions in the field that they purport, severally purport to represent?

A. Yes, sir, they do.

Q. Exhibit—I believe you said Exhibits 1, 2, 3, and 5 were prepared by the Humble Company?

[fol. 115] A. Yes, sir.

Q. By whom were they prepared, what department?

A. Geological Department.

Q. Have you familiarized yourself with the facts depicted on those maps?

A. Yes, sir, I have.

Q. Mr. Sorenson, I wish to ask you a number of questions concerning generally the reserve in the East Texas field. Have you familiarized yourself with the sand thickness in the field as a whole?

A. Yes, sir.

Q. And the sand thickness under the Humble properties?

A. Yes, sir.

Q. Have you made a comparative study of the relative sand thicknesses and quantity of sand in the field as a whole and under Humble's leases?

A. Yes, sir, I have.

Q. Has the company compiled a great volume of information on that subject?

A. Yes, sir, we have.

Q. What was the area of the field, approximately, originally?

A. 133,000 acres.

Q. According to the Railroad Commission's schedules, what now is the approximate extent of the producing area of the field?

A. 131,331 acres.

Q. About how many acres are occupied by the Humble producing properties in the field?

A. 14,656 acres.

[fol. 116] Q. Can you state what was the original sand thickness, average sand thickness for the field as a whole?

A. The original sand thickness was 37.78 feet.

Q. Do you mean the thickness of the producing section or effective——

A. Net effective sand.

Q. What do you mean by "net effective sand"?

A. The sand of average porosity within the producing section capable of holding oil, discounting the amount of shale or ash that might be in that producing section.

Q. Do you mean that is the net amount of sand that actually contained oil within it?

A. Yes, sir.

Q. Will you state whether you have determined the original average sand thickness for the Humble properties?

A. The Humble properties had an original net sand thickness of 48.29 feet.

Q. As against, I believe you said, 37.78 for the field as a whole?

A. Yes, sir.

Q. Are you talking about net effective sand thickness for the Humble properties too?

A. Yes, sir.

Q. You mean by that the amount of, net amount of sand that contains oil under the Humble properties?

A. Yes, sir.

Q. Did contain oil originally?

A. Originally.

Q. How much thicker, on an average, was the sand under [fol. 117] Humble's properties, oil sand under Humble's properties than under the field as a whole?

A. Approximately 10 feet thicker.

Q. Have you computed the number of acre-feet in the field as a whole?

A. Yes, sir, 4,961,546 feet.

Q. What does the isopach map of the Railroad Commission show in that respect?

A. That is the Railroad Commission figure.

Q. Now, in making the computation, have you or not made an adjustment to take care of the arbitrary allocation of 10 feet to the marginal or peripheral contour?

A. Yes, sir, it is deducted.

Q. What average did you give that contour?

A. Five feet.

Q. You say that after you made the adjustment, the field as a whole has 4,961,546 acre-feet of sand?

A. Yes, sir.

Q. Have you made a calculation——,

Mr. Moody: Is that net or saturated sand?

By Mr. Baker:

Q. Do you mean by that that is net?

A. Net sand originally.

Q. Do you mean to say that was originally saturated with oil?

A. Yes, sir.

Q. Have you made a calculation to determine the original number of acre-feet of net oil sand under the Humble's properties according to the Commission's isopach map?

A. Yes, sir, we had 707,770 acre-feet of sand.

Q. Was that saturated sand?

A. Yes, sir.

[fol. 118] Q. Do you mean to say that all of that sand had oil in it?

A. That is true.

Q. Did you consider it from the same standpoint that you use in considering the amount of acre-feet of sand under the leases—in the field as a whole?

A. That is true.

Q. What percentage, according to those figures, of the acre-feet of sand in the field as a whole, did the Humble have?

A. 14.27 per cent.

Q. Which would be from the Railroad Commission's map?

A. From the Railroad Commission's map.

Q. After making the adjustment you spoke of a moment ago?

A. Yes, sir.

Q. If the—have you checked these data against the Humble Company's figures also?

A. Yes, sir, since the Commission put out a sand thickness map, we have made that computation.

Q. Do or not the Humble figures check substantially with the Commission's figures?

A. Yes, sir, they do.

Q. Does—do the Humble figures indicate that the Humble's properties have at least 14.3 per cent of the net effective oil sand in the field?

A. That is what our figures showed, 14.3.

Q. They substantially correspond with the Commission's figures?

A. Yes, sir, they do.

Q. How many wells, producing wells are in the field at this time, according to your information?

A. 25,970 wells, as of February 1.

[fol. 119] Q. Of this year?

A. Yes, sir.

Q. How many producing wells were there under the Humble's leases—on the Humble's leases in the field?

A. 2,547.

Q. I wish to ask you, Mr. Sorenson, whether or not you feel that the amount of effective oil sand in an oil field can be accurately determined?

A. Yes, sir, it can be determined to an accurate degree.

Q. What do you mean by an accurate degree?

A. Within less than 10 per cent.

Q. Within 10—a maximum of 10 per cent possible error, would you say?

A. Yes, sir.

Q. Will you describe for the Court the method usually employed in estimating the sand section and the net effective oil sand in the section?

A. Yes, sir. To determine the section, by the use of core records and cores and cuttings, or electrical logs, you can determine the thickness of the sand from the top to the bottom of the sand, either to the water or to the base of the sand itself.

Q. That will give you the total sand section, will it?

A. That will give you the total section that contains oil, shale, or something else.

Q. How do you determine the net effective oil sand?

A. By subtracting the impermeable materials leaves the net effective sand.

Q. Can you with that data that you have mentioned in [fol. 120] the East Texas field or not with reasonable accuracy determine the amount of shale and impervious material in those sand sections?

A. Yes, sir, on the wells drilled. We have that information.

Q. Can you correlate that information between the various wells with reasonable certainty?

A. Yes, sir.

Q. Is that method you mentioned just your method, or is it generally employed by geologists and engineers in determining effective oil sand?

A. That is the general method.

Q. Is that relied upon by geologists and petroleum engineers?

A. Yes, sir, it is.

Q. Do you mean to say that that is the only feasible method that you know of, or not?

A. It is the only feasible method that I know of.

Q. How do you determine the amount of oil in your effective oil sand?

A. You reduce the effective sand to barrels, or a porous space. Then, subtract the amount occupied in the porous space by connate water. Then, by a study of oil itself, you will know how much gas is in solution, and how much space a barrel will occupy in the reservoir, compared to that same amount of oil at the surface.

Q. In making your estimates, do you usually consider the barrels at the surface, the barrels of oil at the surface in estimating quantities in the reservoir?

A. Yes, sir.

[fol. 121] Q. How can you determine the amount of porous space that is available for holding oil and water?

A. By examination of cores, laboratory analyses of cores.

Q. Is that an accepted and generally used method?

A. Yes, sir.

Q. Is it used generally by geologists and engineers?

A. Yes, sir, it is.

Q. You stated a while ago, I believe, that Humble had, according to the Railroad Commission's isopach, 14.27 per cent, originally had 14.27 per cent of the acre-feet of sand in the field?

A. Yes, sir.

Q. Is that correct? Now, have you made any further calculations to determine the Humble Company's present percentage of acre-feet of sand in the field?

A. Yes, sir.

Q. What do your calculations show—how do you—I will ask you this. Up to what date are those calculations brought?

A. Brought up to the first of February, 1940.

Q. What do your calculations now show that the Humble's percentage of that net effective oil sand in the field is?

A. It still remains approximately 14.3 per cent.

Q. Approximately. Is it at least that much?

A. At least that.

Q. Now, would Humble's percentage of the recoverable oil change, whatever recovery figure you use?

A. No, sir, the percentage would not change. The reserve would, but the basis stays. So long as our reserve remains a constant figure, our percentage would be the same.

[fol. 122] Q. Can you take the acre-feet and net effective sand and calculate the total amount of oil in the sand per acre-foot?

A. Yes, sir.

Q. Can you calculate the total amount of recoverable oil under given conditions?

A. Under given conditions you could.

Q. You think that that could be done with reasonable accuracy?

A. Yes, sir, I think it can be done.

Q. Can that be done in the field as a whole?

A. Yes, sir, for the field as a whole.

Q. Can it be done under the Humble's leases?

A. Yes, sir.

Q. Have you made calculations to determine the Humble's percentage of recoverable oil in the field?

A. Yes, sir.

Q. What do you estimate that to be?

A. 14.3 per cent.

Q. You mean in place?

A. In place.

Q. In the reservoir?

A. That is true.

Mr. Hart: At this time?

Mr. Baker: Is that originally?

A. That is originally, and now, too.

Q. The company's percentage has remained practically the same?

A. Yes, sir.

Q. Suppose that you use a recovery factor of just, say, a [fol. 123] thousand barrels per acre-foot. What would Humble's percentage of the recoverable reserve be?

A. It would be 14.3 per cent.

Q. Suppose you would use a recovery figure of 900 barrels per acre-foot. Would it be the same?

A. Yes, sir.

Q. Or 1100 barrels, or any other figure?

A. That is true.

Q. Will you state the density to which the Humble Company has drilled its properties in the East Texas field?

A. We drilled to a density of one well to each 5.8 acres.

Q. How densely has the field on the average—the field as a whole on the average been drilled?

A. 5.17 acres.

Q. Considering those properties other than the properties of the plaintiff, to what density have they been drilled?

A. To a density of slightly more than one well to 5 acres.

Q. Is that more dense than the Humble's properties are drilled?

A. Yes, sir.

Q. I believe that is all for the present, Your Honor.

Judge Sibley: Does any oil come into this field as a whole?

A. No, sir, the limits of the field have been marked.

Judge Sibley: There is no oil flowing in from other places?

A. No, the oil in the field is trapped, and there is no more oil coming in.

Judge Sibley: It is the salt water that is coming in?

[fol. 124] A. The salt water is coming in and holding the oil against the roof of the reservoir.

Judge Sibley: Your reserve remains constant because of the favorable location of your leases?

A. Because our leases are so wide-spread throughout the field.

Judge Sibley: Somebody is losing the oil that is taken out. I suppose the marginal reserves are being depleted?

A. To the west depletion takes places, but not to the east. To the west it seems the oil is depleting the oil sand as it is being withdrawn.

Judge Sibley: We will take a recess until 2:00 o'clock.

Thereupon, at 12:00 o'clock M. Tuesday, February 13, 1940, a recess was taken until 2:00 P. M. of the same day.

[fol. 125] Afternoon Session

2:00 o'clock.

Judge Sibley: Is the witness on the stand, gentlemen?

Mr. Baker: He is here, Your Honor.

Judge McMillan: What are your initials, Mr. Sorenson?

The Witness: I. L.

Judge Sibley: Any further questions of this witness?

Mr. Baker: Yes, sir, I want to ask a few more, if Your Honor please, but at this time I would like to introduce as Humble's Exhibit No. 6 some cross sections of the East Texas Field.

I. L. Sorenson, a witness for plaintiff, resumed the witness stand and testified as follows:

Direct examination continued.

Questions by Mr. Baker:

Q. Mr. Sorenson, would you mind stepping over here, please?

Mr. Hart: If the Court please, I would like to have some evidence as to who prepared them and so on before we know whether we want to make any objection to them.

Judge Sibley: Yes, sir.

Q. Mr. Sorenson, are you familiar with these charts that I have in my hand?

A. Yes, sir.

Q. What have you had to do with them?

[fol. 126] A. They were prepared in the Geological Department, and I have examined them and checked the sections,—all of the sections.

Q. Have you checked the data from which they were compiled?

A. Yes, sir, the data from which they were compiled and their geological location in the field.

Q. Have you checked against the well records from which the compilation was made?

A. Yes, sir.

Q. Do you think that this is a fair representation of what it purports to represent?

A. I do.

Mr. Hart: May I ask a question or two, please?

Judge Sibley: Yes, sir.

Examination.

By Mr. Hart:

Q. Mr. Sorenson, do you have access to the information on which those charts are based?

A. Yes, sir.

Q. That is available here, in case we want to cross examine you about them? They are available and you can testify about them?

A. The logs are not here but we could get them; they are available.

Q. Well, they will be made available in case we wish to cross examine you about these cross sections?

A. Well, I don't know whether we have them here in Austin, but we can get them up here in very short order if you will specify which ones you want.

Q. Well, I don't know which logs they are based on, but I would like to have them in case we desire to cross [fol. 127] examine you on them. And I want to ask you is it your statement that these are correct interpretations of the basic facts from which these cross sections are made?

A. Yes, sir, I think it is a fair representation.

Q. All right, sir, and you are prepared to defend the charts yourself and not somebody else?

A. Yes, sir, I am prepared.

Mr. Hart: All right, no objection.

Mr. Baker: If the Court please, I would like to say that we did not bring the logs because I was talking over the telephone, I think it was on Saturday, with Mr. Hart and he told me——

Judge Sibley: Well, you can introduce them and counsel says if he can get the logs—he will know what he wants I suppose and will give you a fair opportunity to bring what he wants, if he wants anything.

Mr. Baker: Well, I didn't bring anything because I thought Mr. Hart said it would not be necessary.

Mr. Hart: If the Court please, I think Mr. Baker misunderstood me. I said that in general I would not require an expert witness to first introduce the basic information before giving his opinion on it, but we might want to have available that information if we want to cross examine him on it.

Mr. Baker: Well, I certainly misunderstood you.

Judge Sibley: All right, you may examine him on the charts.

Q. Mr. Sorenson, will you explain that first chart in the Humble's Exhibit No. 6?

[fol. 128] A. That is a north-south cross section of the East Texas Field through the Fairway. The wells are——

Q. Just a moment please. Where is that indicated on this?

A. In the center of the field starting at this point (indicating) from the northernmost well extending through the field to the southern extremity of the field.

Q. Will you explain that to the Court please?

A. These facts are based on electric logs from the top of the sand to the base of the sand, or as far as the wells penetrated the sand. The darker colored area represents the sand. The 3320 foot below sea level plain is marked by this dotted line, and the lenses of shale are represented by the blank white area in the sand section.

Q. Will you show the next one please? Let me ask you this question about that first chart,—what does that indicate as to the permeability and the continuous nature of the body of sand in that cross section?

A. It shows that the section is very uniform from one end of the field to the other end, and is a permeable porous sand.

Q. Now, the second chart, where was that taken from?

A. Section AA is across the northern portion of the field, in what is known as the Longview District.

Q. Explain this——

A. On that map it is indicated as section AA (Indicating on other map).

Q. Will you explain this cross section, please?

A. It also shows the sand in that area of the field in an east-west direction, or west-east, I will say, and shows also the original water level and the present water level; also the shales in the sands.

[fol. 129] Q. What is it that shows the present water level?

A. This area that is above 3320 and not darkened; it is those reentrants in the electric logs where the resistivity decreased.

Q. Well, what does that plat indicate with respect to the continuous nature of the sand body?

A. It shows that it is a very continuous sand.

Q. You mean that there are very few shale breaks there?

A. That is indicated, yes, sir.

Q. Let's have the third one, please. Now, where is that one, the third one taken from?

A. This is section BB across the northern part of the field, from Gladewater eastward.

Q. Explain that cross section, please.

A. This one also shows the sand and the water level and the shale that is encountered in these wells.

Q. By the way, how can you tell that the shale is in any particular area or that oil is in any particular area or that water is in any particular area from reading your electric logs?

A. By the section through the sand showing the resistivity of the sand that is in that sand. The resistance of the oil sand is very great and the salt water sands are very conductive to electric current.

Q. Well, what does that show with reference to the continuity of your sand body?

A. It shows the sand body as being continuous from the western-most part of the field to the east.

Q. Now, let's see the fourth one, please.

[fol. 130] A. Section CC is an east-west section across the field, in the vicinity of Kilgore.

Q. That is about the middle of the field?

A. That is about the middle of the field north and south. It also shows a continuity of the sands, the water level, and the shale, and the materials in the sands.

Q. Let's see the next exhibit.

A. Section DD is an east-west section in the vicinity of Overton on the west, to Pitner Junction to the east of the field.

Q. Is that the south middle section of the field, say?

A. Yes, sir.

Q. Please explain that.

A. It also shows the continuity of the sands and the location of the water level and the shale breaks in the sand body.

Q. What do you mean by shale breaks?

A. There are some impervious shales within the sand body above the water.

Q. Now, in some cases you draw those to indicate—I mean you have indicated there continuous shale bodies. How do you arrive at the fact that those are continuous?

A. If there is a co-relation between wells—if those shales appear in the same position in two nearby wells you can figure that they are continuous between the two wells.

Q. It is a matter of co-relation, is it, between wells?

A. Yes, sir.

Q. Well, let's see the next one, please.

A. Section EE is drawn from the south part of the field east-west below the townsite of Old London.

[fol. 131] Q. Explain that cross section to the Court.

A. It also shows the continuity of the sands, the level of the water and the shales in the sand body.

Q. All right. Let's see the next exhibit please.

A. Section FF is an east-west section, just south of the last one shows.

Q. What does that show?

A. It also shows the water level, the continuity of the sands and the positions of the shales.

Q. All right, let's see the next one, please.

A. Section GG is in the southernmost part of the field, below the Joinerville area.

Q. What does it show?

A. It also shows the water level, the top of the sand, and the continuity of the sand.

Q. Well, does each of those cross sections show the wells from which the electric logs were taken?

A. Yes, sir.

Q. You might explain what an electric log is. What do you mean by that?

A. It is the resistivity record of the formation in the bottom of the hole which you are trying to measure.

Q. How do you get that record?

A. By running the logging devices that are operated by various commercial agencies that sell that service.

Q. Is that what is sometimes called a Schlumberger gauge log?

A. Yes, sir, Schlumberger was the original electric logging device.

Q. Now, what would you say that this indicates with reference to the continuity of the sands in the East Texas Field?

[fol. 132] A. It shows that the sands are very continuous and regular throughout the field.

Q. Would it indicate that there is intercommunication between all parts of the field or not?

A. It indicates intercommunication, yes, sir.

Q. Are there portions of the field where the permeability of the sands is greater than in other portions?

A. Yes, sir, in the edges of the field, there is some difference.

Q. What edge?

A. The east edge particularly, has the impermeable zones.

Q. Well, is there any particular area in the field where you may say the permeability is less than in the rest of the field, generally?

A. Well, in the southernmost part of the field, that darkened area, is on the salt water, and there is an area of tight sands and considerable shale.

Q. Generally speaking, are the sands in the East Texas Field—do they have high porosity, Mr. Sorenson?

A. High porosity, and high permeability, yes, sir.

Q. What do you mean by permeability?

A. The ability of the passage of fluid through the sand.

Q. And what character of sand is it that gives it permeability?

A. Porosity is the factor of the permeability, and the permeability is the ability of that sand to give up the fluid within it or the passage of the fluid through that sand.

Q. Will you explain, please, to the Court, just what happens in that reservoir as these wells are produced. Could you draw a picture of just what takes place, what is the behavior of the reservoir?

[fol. 133] A. Well, if the oil is removed, there is an advancement of the water laterally and vertically against the remaining oil, pushing the oil forward up the structure and into the well bore, and as it is produced, this water advances and maintains the pressure against the oil.

Q. Where is the water?

A. It is in the western portion of the field, and covering about half of the field, advancing as a wedge against the water zone.

Q. Well, is it underneath the oil and pushing the oil upward and eastward, you say?

A. Yes, sir.

Q. Do you consider that the water drive is an important factor in the operation of the field?

A. Yes, sir, it is the source of your energy.

Q. Is it or not important that the top allowable be maintained that will permit the proper utilization of the reservoir energy?

A. That is true.

Q. Mr. Sorenson, have you considered the varying densities to which wells are drilled in that field?

A. Yes, sir.

Q. Have you some figures that you could give to show the varying densities in the field?

A. Yes, sir.

Q. Will you give us those figures, please?

A. Yes, sir, they are the densities of less than—of a well to less than a half acre. There are 109 acres with 360 wells. The acres per well would be .1 and .4 per well or an average [fol. 134] of .3 of an acre per well. On 374 acres, 523 wells were drilled with a density of a well to each .5 to .99 of an acre, or an average of .71 of an acre per well. On 2013 acres 1336 wells were drilled with a density of one acre to one and .9 acres per well, or an average of 1½ acres per well. On 5637 acres 2237 wells were drilled, with a density of one well to each two to 2.9 acres or an average of 2½ acres per well; on 3,160 acres 7,331 wells were drilled to a density of three acres to 4.9 acres per well, or an average of 4.1 acres per well. On 57,448 acres 9,849 wells were drilled with a density of a well to 95 acres to 6.9 acres, or an average of 5.85 acres per well. On 37,159 acres 4,128 wells were drilled to a density of above 7 acres per well, or an average of 9 acres per well.

Mr. Baker: We would like to offer that tabulation, as a matter of convenience.

(Thereupon the tabulation above referred to was marked as Humble Exhibit No. 7.)

Mr. Baker: I believe that is all.

Mr. Fischer: I would like to ask this witness one or two question-, if Your Honor please.

Judge Sibley: You may proceed.

Cross-examination.

Questions by Mr. Fischer:

Q. Mr. Sorenson, now you figure out that the Humble owns this 14.3 per cent of the oil in the reservoir from this map you have got on the wall over here, is that right?

A. Yes, sir.

Q. Yes, sir. Now, you made the map by taking logs at [fol. 135] various wells in the East Texas Field—is that correct?

A. Yes, sir.

Q. How many wells did you take logs of?

A. Well, all the wells are spotted on the map; there are over twenty-five thousand we have examined to get the logs of them. We examined cores on hundreds and checked logs on over a thousand.

Q. Well, as I read your map—I am not very good at reading maps, but as I read it there, you have certain control points, don't you—drilled wells?

A. That is on the work sheets; that isn't placed on the map.

Q. Uh huh. And anyway, you didn't take a Schlumberger of every well in the field?

A. No, sir, it has not been run on every well.

Q. No, sir. You didn't take a log of every well in the field, did you?

A. No, sir, we have the sand top of every well in the field.

Q. Yes; the fact of the matter is, now, isn't it, that in making up this map you took a picture or a log of a well here and then you would go over two miles and took the other one, and then you would average what you thought was the sand structure between those two wells?

A. We didn't go that far. We have representative wells covering the field.

Q. Yes, sir. Well, now, then, you said, as I understood you this morning, that there would be ten per cent error in your calculations, wouldn't there?

A. There is a possibility of that much.

Q. Yes.

[fol. 136] A. But that is the limit; we feel we are within that degree of accuracy.

Q. Well, is that ten per cent error in the well that you were looking at?

A. No, in the total estimation of the field.

Q. You mean you can estimate what is between two wells that are two miles apart, within a degree of accuracy of ten per cent, is that right?

A. I told you they were closer together than two miles.

Q. Yes, sir. Well, how close were they?

A. The density of the field is one well to 5.17 acres, and we spotted all the wells in the field.

Q. I don't care about your spotting them. I am talking about how often did you run this Schlumberger of your own down and get a picture of the sand formation and the porosity of the sand there as to make up your map so you can

tell that you own 14 per cent in all that field. That is what I am asking. How many wells did you have a picture of?

A. I can't give you the total now; we have many hundreds.

Q. Didn't you testify before the Commission it was around two hundred?

A. No, sir, I didn't testify that.

Q. Well, maybe it was Doctor Moore that did that. You don't know the exact number?

A. No, I don't.

Q. You know the London area, don't you, the Old London?

A. Yes, sir, I know where it is.

Q. You know where my little lease is out there—my little well?

A. Yes, sir.

[fol. 137] Q. What is the sand thickness there—the saturated sand thickness as shown by your map here?

A. Do you want me to check it out?

Q. No, I asked you to look at it before you took the stand.

A. I looked at it but I can't say that I found your well. If you will point it out I will read the map for you.

Q. Well, if you can tell, I wish you would do so. It is in the sand section. Do you know how much the sand thickness is there?

A. If I spotted your well correctly, the Railroad Commission map shows you have 70 feet beneath it.

Judge Sibley: How much?

The Witness: 70 feet.

Q. Yes, sir, I think that is right. All right. Now, these wells have never been produced so as to permit any waste, have they?

A. I don't know; I don't know how long they have been producing.

Q. Well, do you know what the Commission's potential figure on them is? They say the—the Commission says that for my well it is on an average of 800 to 850 barrels per hour; that is 19,000 barrels, and I am producing now 17 days a month. That wouldn't be any waste, would it?

A. No, sir, not on that tract.

Q. Even if I produced at 30 days a month at 20 barrels, there wouldn't be any waste?

A. No, I don't believe there would be any waste in that area at that rate for your tract.

Q. Do you think if I produced maybe 50 barrels a day there would be any waste there out of 20,000 barrels?

A. No, as long as you maintained a reasonable top allowance.

[fol. 138] Q. Yes, sir. All right. Now, where my lease is situated there, it is in the middle of the field, isn't that what you call the Fairway?

A. Yes, sir.

Q. Where the structure is high, is that right?

A. Yes, sir, it is very well located on the structure.

Q. Yes, sir. Now, you testified before the Commission here, a little while ago, didn't you?

A. Yes, sir.

Q. And Doctor Moore, he testified—that is another geologist with the Humble?

A. Yes, sir, an engineer for the Humble.

Q. Yes, sir, as I understood you at that time you said that I had the same amount of oil to date under my lease as I had when I started, is that correct?

A. Yes, sir, that is true.

Q. That is right. And that comes about by being situated where I am on the structure, that every time I take out a barrel of oil the water pressure on the west puts another one in?

A. Yes, sir, that is through your peculiar position on the structure.

Q. Yes, sir. That is a fact, isn't it?

A. Yes, sir.

Q. All right. Now, did the Humble Company have any leases situated like mine on the structure?

A. Yes, sir, we have leases all over the field.

Q. Well, you have got some you say situated in the middle of the field where the water puts in a barrel every time you take one out?

A. Yes, sir, we have.

[fol. 139] Q. How many acres have you got of that kind in your leases?

A. Our acreage east of the water line?

Q. Yes, sir.

A. 6921 acres.

Q. Yes, sir. Now, on that 6921 acres has that land got the same amount of oil in place as it had originally when you started taking oil out?

A. Essentially so, yes, sir.

Q. Well, essentially? You mean the same, don't you?

A. Well, there is a little difference in the expansion.

Q. Well, approximately the same.

A. Yes, sir, approximately the same.

Q. Well, every time you took a barrel of oil out, the Lord shoved in another one from the west, isn't that right?

A. That is true.

Q. All right. Do you know how many you have already taken out?

A. No, sir, I don't have that figure.

Q. Well, do you know approximately how many you have already taken out?

A. Approximately 53 million barrels.

Q. You have taken approximately 53 million barrels out?

A. Yes, sir.

Q. And you have still got what you had to start with?

A. Yes, sir.

Q. Yes, sir. All right, thank you.

Mr. Fischer: That is all I care to ask the witness, Your Honors.

Judge Sibley: Governor Moody, do you wish to ask this witness anything?

[fol. 140] Examination by Mr. Moody.

Q. Mr. Sorenson, are you acquainted with the locations on the—in the field of the Rowan-Nichols-Todd A lease?

A. No, I know it is in the Castleberry Survey. It is in the southern section of the field. I could find it for you.

Q. Are you acquainted with the sand thickness in that part of the field?

A. From our maps I could tell you.

Q. You couldn't tell without going over there and looking at the maps?

A. No, sir.

Q. All right. There is one other matter I would like to ask you about. You have spoken about bodies in the structure. Could you describe that field or a cross section of it as being somewhat like a triangle with the top side of the sand as the long side of the triangle, and where the water

is one of the short sides, and then I believe it is the Georgetown Lime the other side of it. Does that describe it or not?

A. Yes, sir; that is, the long side would be the roof of the structure.

Q. The long side would be the roof of the structure, and the water is about halfway across on one of the sides?

A. Yes, sir.

Q. The one that you say lies flat, that water is moving and pushing the oil up that structure, is it not?

A. That is true.

Mr. Moody: That is all.

Judge Sibley: Mr. Hart, you may cross examine.

[fol. 141] Cross-examination.

Questions by Mr. Hart:

Q. Mr. Sorenson, if you don't mind, I believe I would like for you to get those Schlumberger logs that you used in making these cross sections. You say they are available. I would like to have them here so we may look at them in order to examine you about these cross sections.

A. Yes, sir, I will get them.

Q. All right. Now, Mr. Sorenson, you introduced in evidence here a tabulation showing the drilling density in the field by certain classifications. Now, you have that sheet available there that you used?

A. It was introduced in evidence. (Witness refers to sheet.)

Q. All right, sir. What is that exhibit number, so we can refer to it by the record?

The Reporter: That exhibit has been marked as Humble's Exhibit No. 7.

Q. Now, on that tabulation you have five classifications of wells before you get to a density of one well to five acres, don't you?

A. Yes, sir.

Q. All right, sir. Now, there is only a very small percentage of the wells in the field within that very densely drilled classification, or in those two very densely drilled classifications, isn't that true?

A. Do you mean below .7 of an acre per well?

Q. Yes, sir.

A. Yes, sir, there are 883 wells in that classification.

Q. All right, sir. Well, now, how many wells are there [fol. 142] that are drilled to a greater density than one well to five acres. Can you total up this number of wells in this first five classifications you have got there; or maybe it would be easier to take this total of wells in the lease to classifications and then subtract them from the total number of wells.

A. There are 13,977 wells in the less densely drilled divisions.

Q. All right. There are 13,977 wells in the less densely drilled classifications—that is, on tracts having density of one well to five acres or less densely drilled than that, up to one well to nine acres?

A. That is correct.

Q. All right. Now, there are how many wells drilled on the more densely drilled tracts?

A. 11,787.

Q. All right, sir. Then, whereas, there are 13,977 wells on the less densely drilled tracts, beginning with five acres and going to one well to nine acres, there are only 11,787 on the tracts which are drilled more densely than that, isn't that correct?

A. Yes, sir.

Q. I believe you testified that the Humble density on the average is one well to about 5.8 acres, is that correct?

A. Yes, sir.

Q. What percentage of the wells that the Humble has drilled have been drilled as exceptions to Rule 37?

A. I don't know offhand.

Q. Well, there are very few of them that haven't been drilled as exceptions to Rule 37, haven't they?

A. I can give you the exact figure, but I don't have it with [fol. 143] me. I would rather get the exact figure for you.

Q. Well, can you give me an idea of what that percentage would be at this time?

A. Well, I would rather not because I would rather get the total number.

Q. Can you give me an approximate estimate of it at this time?

A. I would rather not do that. I can get you the exact figure.

Q. Well, will you get me the exact figure?

A. Yes, sir, I will be glad to.

Q. And let me have it?

A. Yes, sir.

Q. All right, sir. Now, Mr. Sorenson, I believe you testified that your estimate of the original acreage in the field was 133,000 acres, is that correct?

A. Yes, sir.

Q. I believe you testified that the Railroad Commission's estimate of the present number of acres in the field is 131,331?

A. No, that was the original too.

Q. That was the original?

A. Yes, sir.

Q. I see. Your idea is that it was somewhat larger than that, is that correct?

A. That was our figure, yes, sir.

Q. All right, sir. Now, do you have an estimate of the number of productive acres in the field at this time, according to your estimate?

A. We have compiled a new map as of June 1st, 1939.

Q. All right; is that the latest map you have on that?

A. Yes, sir.

[fol. 144] Q. All right. Now, what is your estimate then of the number of productive acres in the field at that time?

A. I don't know whether I have that figure or not. I have the present estimated extent of the field from the Commission map, of 131,331; that is from the present Railroad Commission map.

Q. Yes, sir. But I understood you to say that that was the estimate that the Commission gave of the original extent of the field according to their map, is that correct?

A. Well, it is present. If I said the other, I was confused.

Q. That is the present extent?

A. That is the present extent, yes, sir.

Q. All right. Now, is your estimate of the present acreage—of productive acreage in the field the same as the Railroad Commission's or is it different?

A. It is substantially the same, yes, sir.

Q. It is substantially the same as that. All right, sir. Now, how many productive acres in the field did the Humble Oil and Refining Company have originally?

A. I have it based on the present Railroad Commission map, that figure. I do not have the older figure.

Q. Well, what do you have—do you have the present number of productive acres in the Humble leases or the original number of productive acres?

A. I have the present, taken from the Railroad Commission map.

Q. Well, do you agree that the Railroad Commission map is substantially correct in that respect?

A. Yes, sir, it checks our map.

Q. Well, what is your figure on the present number of [fol. 145] productive acres that the Humble has in the field?

A. The present acreage is 14,656 acres.

Q. Is that the same number of productive acres which the Humble originally had in the field?

A. It would probably be a little greater than the original but——

Q. Well, how much greater would it be?

A. I don't have that figure with me.

Q. Well, who does have it, if anybody?

A. We perhaps have it in our files.

Q. Well, do you think you could get that for me?

A. Yes, sir. Let me make a list of these things you are asking for. There are so many of them, I might forget.

Q. Mr. Sorenson, let me ask you how you could calculate the number of original acre-feet in the Humble leases without knowing how many productive acres there were originally in the Humble leases?

A. Well, we are dealing with two or three different maps.

Q. And haven't you got here an estimate of your number of acre-feet originally in the Humble leases of 707,780 acre-feet?

Judge Sibley: Isn't there a question of what they bought and what they abandoned? He may know what they have abandoned or bought new.

Mr. Hart: If the Court please, I understood there has been testimony about the number of original acre-feet and the present number of acre-feet.

Judge Sibley: The field has stayed the same, regardless of private ownership. My thought is the Humble may have [fol. 146] bought more acres and may have abandoned some.

Mr. Hart: Yes, sir, excuse me. I may have misunderstood.

Q. I mean, Mr. Sorenson, regardless of the number of acres originally in the leases now owned by the Humble, the number of productive acres in those leases, whether the Humble has owned them throughout the life or not.

A. All right; if I understand your question correctly, you want to know how many acres we originally had in the field.

Q. How many productive acres you originally had—there were originally in the Humble leases in the field—that is, taking the same leases that you own now, how many productive acres were there originally in those leases?

A. Well, we would go back to the Railroad Commission map and we have been using it, and from the Railroad Commission map our original productive acres is still—was 14,656, and that is what the Commission map shows today.

Q. All right, sir. Then the Humble today has the same number of productive acres in its leases as there were originally when the field was open, is that correct?

A. Yes, sir, based on the Commission map, that is what we have.

Q. All right, sir. Then, there has not been any part of the Humble leases abandoned; you still have the same number of productive acres as there were originally in the Humble leases?

A. Substantially so, yes, sir.

Q. Substantially the same; all right, sir. Now, was your estimate of the number of acre-feet of productive oil sand in the Humble leases originally 707,780? Is that the figure which you gave?

[fol. 147] A. That is the figure I gave, based upon the Commission's original map.

Q. And you accept that figure as being substantially correct, do you not?

A. Yes, sir.

Q. Now, what was the original number of acre-feet net effective sand in the field as a whole?

A. The field as a whole had 4,961,446.

Q. 446?

A. Yes, sir—no, 546.

Q. 546?

A. Yes, sir.

Q. Now, would you give the number of acre-feet of net effective sand in the field today?

A. No, sir, I don't have that.

Q. Well, have you made that calculation?

A. Yes, sir, it is calculated in our last map.

Q. What is that figure? Can you get that figure for me?

A. I don't have it with me. It is the figure of June 1st.

Q. Can't you give me about how much it is?

A. No, sir, I wouldn't want to guess at it.

Q. Well, is it 1,000,000; 2,000,000, or what?

A. I would prefer to wait and get the exact figure.

Q. Now, Mr. Sorenson, to figure out the exact acre-feet of sand the Humble now has you would have to know how many acre-feet of sand were in the whole field, wouldn't you?

A. Yes, sir.

Q. Still you can't give me an approximate idea even of the number of acre feet of sand in the field today?

A. I would be glad to get you the figures. I don't have [fol. 148] them with me.

Q. You can give me an approximate idea, whether it is still about 3,000,000 or 4,000,000 or whether the field has been depleted any, and if so, how much?

A. I can guess at it, but I prefer not to do that. We can get our present records and bring them to you and you will have our present idea.

Q. Mr. Sorenson, there is no way in the world of figuring out the percentage that the Humble has of the present per acre feet there is in the whole field, is there?

A. Our percentage is the same because of the widespread distribution of our leases.

Q. You mean regardless of the number of acre-feet in the field today the Humble would still have a percentage of 14.3 per cent?

A. That is the way it works out at this time.

Q. Acre-feet of sand. I am not talking about recoverable oil. I am talking about acre-feet of sand.

A. Acre-feet of sand, that is true. The advancement of the water has been over the western half of the field, and our leases are distributed all over the field, so the percentage will remain the same.

Judge Sibley: You lost as much in proportion as the field as a whole had, is that what you mean?

A. Yes, sir.

Q. Now Mr. Sorenson, is that your only basis of saying now that the Humble has today 14.3 per cent of the acre-feet of sand remaining in the field at this time?

A. That is based on our record of the field. I will find it for you. I don't have it with me on the stand, but we [fol. 149] have made the calculation. We can furnish our present records.

Q. In order to figure out what your percentage of the present acre-feet of sand is you had to have a figure for the acre-feet in the field and you had to have a figure for the acre-feet of sand in the Humble leases, didn't you, and divide one into the other to get the percentage?

A. Yes, sir.

Q. You don't have the figure for the whole field today?

A. No, sir, I don't have it with me today?

Q. Will you get it?

A. Yes, sir.

Q. Do you have the acre-feet of sand in the Humble leases today?

A. No, I told you I don't have them with me.

Q. You don't have that either?

A. I have the percentage. If I may make a list of what you want I will get that.

Q. You said it was a certain percentage. I want to know how you arrived at it. Can you give me an approximate idea of the number of acre-feet of sand that the Humble has at this time?

Judge Sibley: We will rule out approximations. If he wants to be exact I think he has a right to be.

Mr. Hart: All right.

Q. Mr. Sorenson, could you tell me this: Has there been any depletion in the Humble leases up to this time? That is, are the same number of acre-feet of sand in the Humble leases today as there were originally in the field?

A. No, sir, there has been depletion on the Humble leases.

Q. Have there been any abandonments in any of the Humble leases?

[fol. 150] A. Yes, sir, we have abandoned leases.

Q. How many wells has the Humble abandoned.

A. One in the past month, but over the life of the field I can't give you the exact number.

Q. About how many have you abandoned, do you know?

A. I will get you the exact figure. I don't have that with me.

Q. Well, you show on this map here certain depleted areas on the west side of the field and on the east side of the field. I am speaking now of Complainant's Exhibit No. 5. Does the Humble have any leases in those depleted areas you show on that?

A. Yes, sir.

Q. Where do you have leases in the depleted areas?

A. Do you wish me to point it out?

Q. Yes, sir, please.

A. North of the river in the Longview district we have lost wells on the Schultz and Castleberry leases. We lost wells on the Robertson tract in the Henderson district. We have lost wells at Marr.

Q. Those wells you have just spoken of shown on Complainant's Exhibit 5 are located on the east side of the field, are they not?

A. Yes, sir.

Q. What was the cause of the abandonment of those wells on the east side of the field by the Humble Oil & Refining Company?

A. They reached the end of their productive life.

Q. Why did they reach the end of their productive life? What physical factors caused that to come about?

A. Not enough bottom hole pressure to make productive wells.

[fol. 151] Q. Not enough bottom hole pressure. In other words, the pressure was not transmitted over to the east side of the field in those sections where you abandoned the wells, is that correct?

A. In those areas, yes, sir.

Q. What, in your opinion, Mr. Sorenson, prevented the transmission of the pressure across the field to those east side wells that the Humble has abandoned?

A. Very thin sands and considerable amounts of shale in them.

Q. Isn't it true, Mr. Sorenson, that in those areas where the wells have been abandoned the sand is of very low permeability, comparatively, and that is one reason the pressure is not kept up?

A. Yes, sir. It is the extreme margin of the field.

Q. Now, have you lost leases over here on the west side?

A. We have lost wells. We have lost no leases.

Q. You have lost wells. That is, you have abandoned wells?

A. That is true.

Q. Now, would you point out where the Humble has abandoned wells on the west side of the field?

A. We have abandoned a well in the Gladewater area, on the Johnson lease, and we abandoned a well in the Overton

area, on the Joiner lease. Now, there are other abandonments, but I don't recall them.

Q. Now, as to these leases on the west side of the field, what physical factor caused the wells' abandonment there?

A. They were drowned out by water.

Q. Do you know how much oil they were producing per day when those wells were abandoned?

A. They produced oil up to the point where they produced [fol. 152] nothing more than water, they exhausted the oil.

Q. They weren't producing any oil at all when you abandoned them, is that correct?

A. Practically so.

Q. Well, about how . barrels per day were they producing?

A. They reached the point where they were not commercial wells.

Q. Well, how many barrels per day were they producing, Mr. Sorenson?

A. Very few barrels of oil and a great amount of water.

Q. How many do you mean by a very few barrels of oil?

A. Two or three barrels of oil. I can get you the complete production records of those wells.

Q. Well, if you can give me the exact figures; but your estimate is now they were producing two or three barrels per day when they were abandoned, is that correct?

A. Yes, sir, and a hundred or so barrels of water.

Q. Now, look here at the Rowan & Nichols Todd A lease in the William H. Castleberry survey. Can you locate that here?

Mr. Moody: Mark that in red. Is that all right?

Mr. Baker: All right.

Q. Mr. Sorenson, according to your map here, is that Rowan & Nichols Todd A lease east or west of the point of water encroachment up to the present time?

A. Barely east of it, a very short distance east of the eastern-most water, according to our map.

Q. About how far is it?

A. About 1,500 feet, according to this map.

Q. Then, according to your testimony that you have given already, the Rowan & Nichols Todd A lease is in that class

of leases which have today substantially the same amount of oil under them as they had originally, is that correct?

[fol. 153] A. Yes, sir.

Q. Mr. Sorenson, are those wells that the Humble has abandoned, did they plug them and file a plugged and abandoned report in the Commission on those wells?

A. I am sure they did.

Q. You are sure they did?

A. That is the rule.

Q. Now, Mr. Sorenson, I believe you went over with Mr. Baker the manner in which you arrived at what you call the net effective sand. You undertake to determine the total sand by well logs and so on, do you not? By what information you have of that nature?

A. Yes, sir.

Q. That is correct, isn't it?

A. Yes, sir.

Q. Now, that sand in the East Texas field is not all Woodbine sand, is it? There is some streaks of shale and volcanic ash and other impermeable materials, isn't that true?

A. Yes, sir, the Woodbine section has some impermeable materials in it.

Q. Now, those impermeable materials don't as a rule contain oil, do they?

A. If they are impermeable they are incapable of containing oil.

Q. If they are impermeable they are incapable of containing oil, and also if they are impermeable, why, there is no oil that can go through them, isn't that true?

A. Not unless there is a well drilled through them. If there is a well drilled through them they will.

[fol. 154] Q. The oil simply won't go through those shale streaks or streaks of ash or clay or whatever else is in there of an impermeable nature, isn't that true.

A. That is true. If they are impermeable the oil cannot penetrate.

Q. Do you know what percentage of shale there is on the average throughout the field?

A. Not on an average throughout the field. We work it by areas over the entire field.

Q. Well, how does it vary throughout the field, the percentage of shale from one part of the field to the other?

A. In a given sand thickness?

Q. Yes, sir. Just take a given sand thickness in different portions of the field. What is the extent of variation in the amount of shale and other impermeable bodies in the sand?

A. In a given area, in a given sand thickness, there is very little difference.

Q. Do you mean, then, that the sand is substantially the same throughout the field, given a certain thickness of sand?

A. In a given area they are substantially the same, yes, sir.

Q. In a given area they are substantially the same?

A. In a given area or a given sand thickness the shale content will be very much the same.

Q. But if you take one part of the field and compare it with another part of the field, is the percentage of shale the same?

Judge Sibley: Ten per cent in one place and five per cent in another?

A. Yes, sir, over a great area there will be a great variance.

Q. What will the variance amount to?

[fol. 155] A. Give me the sand thickness and then I will know what areas you are talking about.

Q. Well, take this section down there that you colored in light gray on Plaintiff's Exhibit No. 5. What section of the field do you call that, in general?

A. The southern section of the field.

Q. All right. Now, what percentage of shale is in that area of the field, what percentage of total Woodbine section to shale or other impermeable material?

A. Well, a very great percentage. We can look on that electric log on the section.

Q. You are familiar with that, aren't you, Mr. Sorenson?

A. Yes, sir.

Q. Can't you give me about what that percentage would be?

A. I would rather look at the log and measure it for you. I don't want to give an estimation on something like that where we have a complete record.

Q. All right, get it and tell me how much it is of that area, if it won't take you long.

A. Almost fifty per cent.

Q. There is almost fifty per cent of the Woodbine section in that area that is shale or other impermeable materials, is that correct?

A. I used, measured, just one well, and that was where we found more shale than in any of the others, so that would be approximately right.

Q. Would that be approximately right for that area colored in gray on Plaintiff's Exhibit 5?

A. Yes, sir.

[fol. 156] Q. Now, are there other portions of the field where the percentage of shale is greater or less than that?

A. In the extreme eastern part of the field it would probably be greater than that, along the eastern periphery of the field, there is a higher shale percentage.

Q. How wide a band do you call the eastern periphery of the field? How far from the extreme east edge inward toward the center would you say was the extreme east edge?

A. Just a few hundred feet. The area of sub-marginal wells I would consider the area of the most impermeable sands in the producing section.

Q. Now, about what percentage of shale would you find in that part of the field?

A. A very high percentage of shale, impermeable sandy shales.

Q. More than fifty per cent?

A. More than fifty per cent.

Q. About what per cent would it run up to?

A. Approximately seventy-five per cent in this narrow area.

Q. Would that be about an average of the percentage of shale in that part of the field?

A. I believe that is true, yes, sir.

Q. Now, suppose you go on westward from what you call the eastern periphery of the field and get in there to where the sand is somewhat thicker. Now, what would be the percentage of shale as you went toward the middle of the field? Would that depend on whether you were in the north end or south end?

A. The central part of the field as a whole has a very small percentage of shale.

[fol. 157] Q. About what percentage would that be?

A. If you are in the hundred foot sand section?

Q. Well, take that for example.

A. That is the thickest sand section there is, and ten or fifteen per cent shale is about all you would find.

Q. As you go eastward you would find an increasingly higher percentage of shale, is that correct?

A. Shale and impermeable sand. The sands get a little tighter to the east.

Q. All right. As you go westward would you find the shale somewhat tighter, from the center of the field?

A. No, sir, going westward the sands thin because of the bottom hole water.

Q. Well, would you find the same percentage of shale from the center, say, or the fairway where you have the thickest sand, would you find about the same percentage of shale from there on all the way to the western edge, or would there be some variation in the percentage of shale from there on?

A. Variation. The percentage of shale wouldn't be as much in the extreme western as in the extreme eastern.

Q. Is there more on the west than in the center?

A. There is more on the west than there is in the center, but not as much as in the east.

Q. About what percentage of shale would you say there is on the west side?

A. Well, I would rather measure those logs, give you what our logs show.

Q. Could you tell me about what percentage it is? I don't want to take the time to have you go into it unless [fol. 158] you would rather take that time to give the exact figure.

A. I would rather go into it and measure it. They are available.

Q. Would it take you very long to do that, Mr. Sorenson?

A. I will measure several wells for you.

Q. And will you have that information available for us?

A. Do you want me to do it now?

Q. No, I suppose not, if you can do it at a recess or tonight and let me have it in the morning.

A. I will do it any time you wish.

Q. All right. But generally speaking, from the center of the field going off toward the edges you have an increased amount of shale or other impermeable streaks? Toward the east it is more marked than toward the west of the center, is that correct.

A. That is true.

Q. Then you find the greatest permeability substantially in the center of the field, is that correct?

A. You find the greatest amount of sand in the center of the field.

Q. All right. And you find the greatest percentage of net effective sand in the middle of the field, is that correct? Or the smallest percentage of impermeable bodies?

A. That is true.

Q. Now, Mr. Sorenson, do those shale bodies that you have been speaking of have any effect whatever, in your opinion, on the free flow of oil in the East Texas field?

A. No, sir, those shale bodies are not continuous. They are of a lenticular nature and communication of the oil around them is common, as borne out by our pressures in the [fol. 159] field and the measured potentials across the field.

Q. All right, I just want to get your position. Your position is those shale streaks that exist in the field have no effect whatever upon the free movement of oil in the reservoir?

A. The only effect they have would be local, in isolated areas. As a whole, they have no effect.

Q. Now, if you don't mind, give us an idea of what you mean by their effect being just local. Over what area would they possibly affect the movement of the oil in the field?

A. The shale lenses pinch out to the ends. They are lenticular in nature and they are not over any great extent.

Q. All right, sir. Now, what area would be affected by one of those lenses? You say it would just be local. I want to get your idea of what you mean by local.

A. Well, one local lens would be affected. There would be a small percentage of sand, perhaps, in that one area.

Q. What would that area be?

A. Well, a very small area around that well, a well.

Q. What do you mean by very small area?

A. Well, you have seen those logs and they show shale streaks in those logs and they do not appear to be continuous.

Q. I have seen your cross section, yes, sir, but I want you to tell me what you mean by a small local area. If you can express it, tell me about what that area would be. Would it be one acre or half an acre or a quarter of an acre or ten acres or what?

A. With the drilling in the field as it now is we find that very few shale lenses are continuous between wells. We

can't correlate those shale beds like we can correlate the [fol. 160] tops of the sands.

Q. I asked you if you can tell me what a small local area would be, what you meant by that in answer to my question. Now, can you tell me what a small local area is? What you mean by that term?

A. I think I have told you.

Q. Well, about how many acres would it be?

A. The density of a well to each five acres throughout the field and no dry holes in the field certainly shows that these shale bodies are not very important.

Q. I didn't ask you that, Mr. Sorenson. I am asking you if you can tell me, please, what you mean by a small local area?

A. If you find no dry holes in five acres it is certainly a small area.

Q. Would you say that five acres was a small area that might be affected by a shale lens?

A. Yes, that is perhaps true.

Q. All right, Mr. Sorenson, let's look at this long cross section you have. First let me ask you about this cross section. How is that identified, this one of the cross sections in Complainant's Exhibit 6?

A. GG.

Q. This is GG?

A. Indicated on the index map by these lines.

Q. Now, let me ask you about the rise in the water level which you have shown here on this map. This dotted line which I am pointing at on the cross section that I have just named is the estimated original water level, is that correct?

A. That is correct, 3,320.

[fol. 161] Q. That is 3,320 sub-sea. That is your estimate of the original water level in the field, is that correct?

A. Yes, sir.

Q. Now, the light area above that dotted line, in the western portion of the field, which I am now pointing to with my pencil, is the portion of the original oil sand which has been drowned out by water, is that correct?

A. Yes, sir, that is our interpretation.

Q. Now, as shown on this cross section map, that rise has not been horizontal, has it?

A. No, sir. That is based on productive wells in that area, and as indicated is a rise that is not exactly uniform.

However, if you will draw this to scale, which would make it so long it would be impossible to bring it in, you would be unable to recognize that rise.

Q. Well, let's see about that. You have that rise in there, haven't you?

A. It was put in there from productive wells that are now making water.

Q. Those wells don't appear on this cross section, do they?

A. No, sir.

Q. You don't have any wells in this cross section showing the extent to which that water has risen in that area?

A. No, sir.

Q. Mr. Sorenson, did the presence of these shale lenses that you show running into that portion of the field have anything to do with the uneven rise in the water table in that part of the field?

A. No, sir, I don't think they were important in that area to effect the rise of the water.

[fol. 162] Q. In your judgment, they had substantially no effect on the uneven rise in the water, is that correct?

A. Yes, sir.

Q. Now, about what has been the rise in the water table, and point where is has risen highest, as shown on that cross section?

A. As shown on this diagram-atic section, it is thirty-six feet.

Q. Well, is thirty-six feet, in your judgment, does that represent the highest point, the highest extent of water encroachment in the field today or not?

A. That is the highest point in this map, but I think there are higher points in the field.

Q. Do you know what would be the highest point it would reach above the original water level?

A. No, sir, I don't know.

Q. Could you tell me the average rise in the water level?

Judge Sibley: You may have an idea about this, but what is the reason for this? We know the water is rising.

Mr. Hart: If the Court please, there have been estimates by the Humble about their depletion. They have just stated what their depletion has been, what the depletion in the field has been to date, and what their percentage of the acre-feet

left is, and I want to check up on it and, if I can, see whether or not their estimates are correct.

[fol. 163] Judge Sibley: We are not going to follow you through that arithmetic. He says he will give you exactly how many wells they have abandoned. You will have a record here that no judge will read.

Mr. Hart: If the Court please, I don't know any way of checking to see whether their figures are right without getting the physical facts.

Judge Sibley: It looks like we are wasting time.

Mr. Hart: If the Court please, I will hurry along and get this just as fast as I can.

Q. Now, Mr. Sorenson, could you give us the average rise in the water table throughout the field up to the present time, your estimate?

A. It would be an approximation, something like twenty feet.

Q. About twenty feet?

A. Higher in some areas and lower in some.

Q. Mr. Sorenson, you stated that the shale streak did not have any influence on the irregular rise in the water table. What, in your judgment, did cause the irregular rise in the water table in the East Texas field? The fact that it did not rise horizontally?

A. The withdrawals of oil.

Q. The withdrawals of oil?

A. Yes, sir. That is more important than lenticular shale streaks.

Q. That is your explanation?

A. Yes, sir.

Q. Now, Mr. Sorenson, you have spoken of this eastward migration of the oil that is taking place there in the field. [fol. 164] By reason of that eastward migration there are certain portions of the field that will produce longer than other portions of the field, are there not?

A. Yes, sir.

Q. What portion of the field, in your judgment, will produce longest?

A. The highest portion on the structure.

Q. You mean the extreme eastern edge?

A. Yes, sir, the extreme eastern edge that is still within the field. I don't mean within the peripheral narrow band that had no oil in it to start with.

Q. How far east of the east edge would you say would be the last portion of the field to produce?

A. You mean west of the east edge of the field?

Q. Yes, sir.

A. Just that few hundred feet, far enough west where you get a permeable sand.

Q. You mean five or six hundred feet, something like that?

A. Yes, sir.

Q. A band running north and south five or six hundred feet west of the east edge of the field will be your judgment of the part of the field that will produce last?

A. Yes, sir. The highest part on the structure where there is sufficient sand for a good producing well.

Q. About how many net effective feet of sand are there in that section?

A. It would vary in parts of the field. Some parts of the field ten feet of sand would be sufficient to last as long as any part of the field.

[fol. 165] Q. Then in general, excluding the portion on the eastern periphery which you have spoken of, the producing life of a field is correlated to the height of the sand in the thick area? Is that true that where you have a high sand you will generally have a long producing life, and where the top of the sand is lower you will have a shorter producing life, generally speaking?

A. There is a correlation between life and position on structure, yes, sir.

Q. Mr. Sorenson, what is your estimate of the original amount of recoverable oil in the East Texas field?

A. The original estimate?

Judge Sibley: He stated that twice.

Mr. Hart: If the Court please, I don't think that Mr. Sorenson has given that.

Judge Sibley: I can't remember the figures, but he gave that.

Q. Have you stated that, Mr. Sorenson?

A. I stated the number of original acre-feet of sand in the field.

Q. All right.

A. Based on a Railroad Commission map.

Q. What is your estimate, Mr. Sorenson, of the original amount of recoverable oil in the field?

A. At what date?

Q. Well, what is your estimate as to what it is now? If you have made various estimates, tell me what they have been at different times.

[fol. 166] A. At the present time the field is drilled up completely and we know the limits of the field. The earlier estimates, then the limits of the field were unknown.

Q. Well, what is your estimate now of the original amount of recoverable oil which was in the East Texas field?

A. In the neighborhood of 5,000,000,000 barrels.

Q. In the neighborhood of 5,000,000,000 barrels?

A. Yes, sir.

Q. How much oil has been produced from the East Texas field up to date?

A. I don't have the figure with me, but it is in the neighborhood of 1,360,000,000.

Q. 1,360,000,000 barrels. Does that figure, Mr. Sorenson, that you have given include hot oil as well as allowable oil?

A. Yes, sir.

Q. That is an estimate of the total production to date, hot oil as well as oil produced under proration, is that correct?

A. The total production.

Q. Do you know how much of that estimate is hot oil and how much is allowable oil?

A. No, sir, I don't.

Q. Could you get me that figure too?

A. Yes, sir, I will make an effort to get it.

Q. Then, according to your estimate, there is left in the field today approximately how many barrels of recoverable oil?

A. Approximately 3,600,000,000 barrels.

Q. Approximately 3,600,000,000 barrels?

A. Yes, sir.

Q. I believe you say you don't have the number of acre-feet of sand in the field at this time, do you?

[fol. 167] A. No, sir.

Q. But you can get that?

A. Yes, sir.

Q. Would you then figure for me the probable recovery per acre-foot from those figures?

A. Yes, sir. It is just arithmetic.

Q. Will you figure that out and have that available too?

A. Yes, sir.

Q. Does the Humble Oil & Refining Company have today substantially the same amount of recoverable oil per acre-foot under its leases as the average of the East Texas field?

A. Yes, sir, our property is average.

Q. It would be average?

A. Yes, sir.

Q. Now, Mr. Sorenson, do you mean by that there are the same number of barrels of recoverable oil per acre-foot, say, on the east side of the field as there is on the west side of the field?

A. As of the present time that would be right.

Q. As of the present time there are the same number of barrels of recoverable oil on the east side leases as there are on the west side leases?

A. Per foot, yes, sir.

Q. Per acre-foot?

A. Yes, sir.

Q. Mr. Sorenson, you spoke of the fact that some leases in the field would produce considerably longer than other leases. Would you estimate how much longer those last leases will produce, assuming the present method of proration?

[fol. 168] A. They will produce a great time longer. I wouldn't put it in years.

Q. You couldn't estimate about how much longer it would be?

A. No, sir.

Q. Well, would it be around in the neighborhood of thirty or forty years, something like that?

A. There will be production in the field for forty years, in some places.

Q. Do you have, Mr. Sorenson, the amount of oil that has been produced from all of the Humble leases to date?

A. I have our total production, yes, sir.

Q. All right, how much is that?

A. We have produced 131,364,982 barrels.

Q. Does that include the production from the leases which you now own? Does that include the production before you bought the leases, as well as after you bought the leases?

A. As near as we can ascertain, that is the complete production of the leases.

Q. That is the total production? There may have been somebody on it before you that ran some hot oil off. Do you

include that in your estimates of how much has been produced from those leases?

A. Yes, sir.

Q. You don't know how much you estimate as being oil in excess of allowable oil, do you?

A. No, sir.

Q. Could you get that figure for me too?

A. I don't know where I would get it.

[fol. 169] Q. Well, it is easy to calculate the allowable oil from the leases, isn't it?

A. No, that is very hard to do.

Q. How did you arrive at the figure?

A. Our total production?

Q. Is that just a guess?

A. No, sir, that is based on runs.

Q. Based on runs.

A. Yes, sir.

Q. You mean a report to the pipeline? Just what did you base that figure on?

A. That is based on our production reports and pipeline runs.

Q. Production reports to whom, Mr. Sorenson?

A. By our production department.

Q. In other words, it is based on records of the Humble Oil & Refining Company, is that correct?

A. Yes, sir, and can be checked against the comptroller's record.

Q. All right. As of what date is this figure given, Mr. Sorenson?

A. I think it is June 1st, but I will have to check that.

Q. Well, will you have that information, please, sir?

A. Yes, sir.

Q. That is not of February 1, 1940?

A. No, sir, we couldn't get it.

Q. If you will let us know what that is.

A. Yes, sir.

[fol. 170] Q. Now, Mr. Sorenson, you gave us a figure of 5,000,000,000 barrels as your present estimate of the originally recoverable oil in the East Texas field. How has your estimate, or the estimate of the Humble to which you have had access, varied from that figure of 5,000,000,000 barrels during the life of the East Texas field, and if it has varied, how much?

A. The figures vary considerably, for several reasons. The number of acres involved.

Q. Well, now, before you give me the reasons, tell me what the variations have been and then if you want to explain it you can.

A. My first figure on the field, when it was a 100,000 acre field, was in the neighborhood of 4,000,000,000 barrels. That was in 1931.

Q. What was the official estimate the Humble made? They make an estimate the first of each year at their Tyler office, don't they?

A. They estimate their reserves in their annual reports, yes, sir, but I don't recall what that was.

Q. Beginning in 1933, on January 1st of each year, from now until then, there has been an official estimate gotten out by the Humble engineers, hasn't there been?

A. Yes, sir.

Q. Do you have that information available?

A. It is available, yes, sir.

Q. Will you get that for me, please?

A. Yes, sir.

[fol. 171] Q. What has been the lowest estimate of the total amount of recoverable oil in the field originally?

A. I don't know what the original estimate was. The field originally was considered to be only a few acres, a few thousand acres, and as it has been completely developed the acreage is changed.

Q. The limits of the field were fairly well defined in 1933?

A. Yes, sir.

Q. I just asked you to begin with 1933 and give me the figures of the estimates that the Humble had from then on to date; and I wish you would also give me, if you can, the figures that the Humble had on the amount of recoverable oil in its leases originally, those estimates being made on January 1st of each year from 1933 up to date. And if you have similar estimates about the acre-feet of sand I would like to have them.

A. I will get whatever I can. I will find what I can for you.

Q. Do you know what percentage, Mr. Sorenson, the Humble leases are of the total productive acreage in the field?

A. Yes, sir, 11.16 per cent of the acreage.

Q. 11.16 per cent of the acreage?

A. Yes, sir.

Q. What percentage of the allowable currently are the Humble leases getting?

A. 11.15 per cent.

Q. The figures are practically the same, are they not?

A. Those figures are.

[fol. 172] Q. Now, Mr. Sorenson, after you have determined the amount of what you call net effective sand under a lease, are there certain variable factors that will determine how much recoverable oil is in that sand or are those factors the same in all parts of the field?

A. You would have to consider position on structure and how the allocation of allowable was.

Q. Well, first in the net effective sand you have not only deducted for shale and other impermeable streaks, but you have also corrected that to a certain percentage of porosity, have you not?

A. Yes, sir.

Q. In giving your estimates?

A. Yes, sir.

Q. Now, do you have available the number of actual feet of Woodbine sand, exclusive of shales and other impermeable materials, in the Humble leases, under the Humble leases?

A. No, I don't have them with me.

Q. You don't. Well, does anybody else here have that?

A. I don't know. We have 159 leases, and if we are going to bring everything in, it will take a truck.

Q. I understand that has been turned in to the Commission, but the figures that were turned into the Commission were not the actual number of acre-feet, but it was the number of acre-feet corrected to 26% porosity, was it not?

A. Yes, that is the way you estimate your net effective sand, reduce it to that porosity.

[fol. 173] Q. Do you have available the figures which would show the actual acre-feet of sand before you corrected it to that porosity?

A. That could be determined by the net section from a structure map.

Q. Could you do that if I gave you a list of the leases that you say have been depleted? Could you give us the actual number of acre-feet of sand, the leases you say have been depleted, if I give you a list of the leases?

A. Yes, sir.

Q. I will give you a list——

Mr. Baker: If Your Honor please, I don't want to be objecting to the line of inquiry in particular, but the company has already furnished the Commission with those reports, and here they are. He is asking this witness to make up a lot of data that would probably take two or three weeks to compile. I don't see how in the world he can compile all of that, and get them in here while this case is being tried.

Judge Sibley: I have been doing rather all of the objecting, and quite at a loss. I don't see how this court can possibly handle the details being proven. What good will it do?

Mr. Hart: If the Court please, the Humble has stated that their leases have been depleted in a certain amount, and they assert that as a basis of showing their property has been, is being confiscated. The only way their leases have been depleted, aside from a few leases on the east——

[fol. 174] Judge Sibley: The past will have to stand for itself. It is whether or not these present orders are proper or improper orders.

Mr. Hart: The only purpose—they have offered it, and they obviously think it is relevant, and the reason they think it is this. In order to determine their percentage of the present acre-feet of net effective sand in the field, in order to determine what they say they ought to get, they have got to figure how much they have been depleted in there.

Judge Sibley: They say there is just as much in there as there ever was.

By Mr. Hart:

Q. Mr. Sorenson, have you been depleted, or do you have the same amount of net effective sand in your leases that you originally had?

A. We have the same amount in the eastern portion of the field, but in the western portion we have certainly been depleted.

Q. You have been depleted to some extent?

A. Yes, sir.

Q. And you have figured out how much that depletion is, at least you have figured out what percentage of what is left you now have?

A. Yes, sir.

Q. In order to check on that figure, if the Court please, I want to find out what that depletion has been, so that I can find out how much they have left, and the only way I can do it is to find out how much sand they have left.

Judge Sibley: Of course, we haven't got to take into account the oil. We haven't got to make any orders about this [fol. 175] business, but to see whether the Commission has exceeded its powers or transgressed the Constitution, or done anything else it shouldn't have done, in dealing with these present orders, dealing with the situation as it exists today.

Mr. Hart: Yes, sir.

Judge Sibley: I can see the history of the past depreciation would be of some service in enabling us to prophesy what is going to happen under these orders in the future. If it has run out of the west and run to the east that might help us, but I really can't see how the history of the particular leases can help us. It has just bogged me down, personally.

Mr. Hart: The reason, if the Court please, we want to find out the extent of their depletion, is to find out how much oil sand they have left. They say they have a certain percentage of oil sand left. We can't find out that until we know to what extent their leases have been depleted up to this time.

Judge Sibley: And by depleted, you mean the water has invaded it?

Mr. Hart: Their depletion has been substantially all by reason of water encroachment. A certain number of acre-feet of oil sand, they say, on the west side, on the leases on the west side, has been drowned out by water. I want to check, if we can, that figure. It is a complicated matter.

Judge Sibley: You understand it better than I do, of course.

[fol. 176] Judge McMillan: Despite the fact that this water encroachment has been, has meant depletion to the west, that what remained is constant, because of the fact that they have the same percentage remaining that there was before. In other words, their leases are so far-flung over the field that their percentage of what remains is just what it was before the depletion. They haven't got as much, but the percentage is constant. If that is true, what difference does it make? That is what this witness testified to.

Mr. Hart: Their percentage——

Judge McMillan: Isn't that your testimony?

A. Yes, sir.

Mr. Hart: Their percentage may not be what they say it is, and we want to try to ascertain that. They have figures that they have given to the Commission which are reduced to an average. I don't know what the figures were before they applied their ideas of that average. If the net porosity was only, say 20%, instead of 26%, they cut down the net effective sand to that extent, I don't know what was the assigned porosity for each of these leases.

Judge McMillan: You get such an enormous amount of detail with your question, as to its value, the Court is bound to lose all sense of respect for the matter.

Mr. Hart: If we can't check on what their depletion has [fol. 177] been, we have no means of checking on what their percentage of per—on their estimate of the—or percentage of the net effective sand in the field is, as to whether that estimate is right or wrong, because they say they got that percent, and we don't know how they got it.

Judge Sibley: I don't want to cut a lawyer off from developing his case. Have you got, Mr. Hart, any witness who has been through this himself, and could bring that, and could present your ideas and figures about that directly?

Mr. Hart: I don't know how any witness could check on these leases, if the Court please, without knowing what they claimed their actual acre-feet of land figure is.

Judge Sibley: Of course, you know, and the Humble knows where their leases are, and whether they are east or west of the water line encroachment. Everybody knows how high the water has risen in particular wells, and it would take a tremendous amount of time to prove it.

Mr. Hart: It is the very essence of this case. If they don't have that much oil, even under their theory, they are not entitled to an increase in allowable.

Judge Sibley: You are proposing to take it up lease by lease, and see whether or not they had any water encroachment?

Mr. Hart: I don't intend to go into those details in court, but I would like to have the details so that we could see whether it is accurate or not. They have testified to a certain figure, and it is difficult to know whether that figure is [fol. 178] right, unless we know how they arrived at it. That is what I am trying to find out.

Judge Sibley: He says the leases are spread over the field about equally with respect to this encroachment line. I don't see why anybody that knows how the property is couldn't tell whether it was so or not without proving the production of these wells.

Mr. Hart: That is the way their leases look, if the Court please. They are scattered at various——

Judge Sibley: What leads you to doubt it, if it looks that way?

Mr. Hart: Because you can't tell what their depletion has been unless you add up all of the depletion for the leases. That is the only way you can find out where the water level is, by examining the various wells.

Mr. Baker: Maybe I can be of assistance by calling the Court's attention to just a few facts that have happened as a matter of history. The Railroad Commission in August, 1939 sent out a questionnaire to the Humble Company and asked the Humble Company to fill out this questionnaire, the answers in that questionnaire. The company did this. This questionnaire was what our estimate of acre-feet of sand is under each lease, and our estimate of the net effective oil sand, and so forth. These data have been in the hands of the Railroad Commission ever since August 8th, 1939. There is here as a summary of the data he is asking for, for every one of our lease-, and they have had the information all of that time, and he can check what this witness has testified to from his own records, or the Commission can do that, and I am rising particularly to say that he [fol. 179] is asking this witness to go back and re-compile all of this information he already has.

Judge Sibley: He may have a right trying a case where a witness makes a general statement, to prove the details about it, but if there is any argument about it, whether he stated it correctly, we would have to sit and listen to it, if it took a week, but if there is no reason that he isn't correct about it, and he is undertaking to dig into details that won't produce new proof, or any proof, it is trying on the patience.

Mr. Baker: The Commission has the information in hand now from which he can seek the falsity of the statement of this witness, if he desires to do so. That information is not only available, but has been available since August 8, 1939.

Mr. Hart: If the Court please, I would like to read from which Mr. Baker had in his hand to show that the Commission doesn't have the necessary information. They have

an estimate here of each of their leases of the—of what they call the net effective sands, and then they have here under "Remarks", "Sand thickness given is net effective oil sand adjusted to an average porosity of 26%."

Q. Now, that meant, didn't it, Mr. Sorenson, that if your estimate of the porosity in that particular respect was far less than 26%, what you did in reporting it here was to cut down the actual feet of acre sand in order to adjust it to a 26% porosity, isn't that correct?

A, That is correct.

[fol. 180] Q. You don't state here in this questionnaire what the actual acre-feet of sand was before you made the adjustment, do you?

A. No, sir.

Q. You don't state that in there. Is there anything in here that this Commission could use to arrive at what your actual acre-feet of sand was before you made the adjustment?

A. The Commission has the records of all of the wells in the field, the production records. We used their sand thickness map and found it accurate.

Q. There is nothing in here to show what you consider to be the actual acre-feet of sand in those leases before you made this adjustment, nothing in this report?

A. No, sir, but I think you will find that report is complete. It will show what we consider is correct at this time.

Q. Well, suppose the Commission calculated what the actual acre-feet of sand was, and it was a figure of, say, only; say it was twice as much as what you have got here, or only half as much; there is no way of telling whether that is due to the fact you assigned a different porosity to the lease than the Commission did, or how you arrived at that from that questionnaire.

A. Since our sand thickness maps check so closely, I don't think there is much chance for an error. You can take the whole field,——

Judge Sibley: This gets to what I was thinking at first. If the Commission has been over this and arrived at a different conclusion from this witness, it looks so simple to let [fol. 181] whoever did that say what they think about it.

Judge Allred: If I may be pardoned for interrupting, counsel may ask this witness leading questions for the pur-

pose of impeachment. It might facilitate matters, instead of asking for this detailed information.

Judge Sibley: I don't think he wants to impeach him. He wants to get to the foundation of this.

By Mr. Hart:

Q. Do you know what it was, the actual number of acre-feet under these leases, was, more or less, than the number of acre-feet you gave after adjusting it to 26% porosity?

A. The adjustment would be downward to bring it to the 26%.

Q. Do you know how much it was, to bring it to 26% porosity?

A. No, I would have to take each of the 159 leases and check them against the map, and start over again.

Q. How long would it take you to do that, you have got the figures?

A. I can measure it in weeks.

Q. You have got the figures here, haven't you?

A. No, I don't have the figures.

Q. Did you ever have the figures before you made that adjustment?

A. I have been over the figures. That work was done by dozens of people working on it.

Mr. Hart: If the Court please, we are in this position; that they stated they have a certain percentage, and we [fol. 182] have no way of checking whether they——

Judge Sibley: It is your job to get ready to meet witnesses that don't agree with you about things. We are in the trial. This witness states in his opinion the depletion has been such and so spread that it averages just the same in percentage of what they still have in the sand. That is his opinion. He can't swear to that like somebody that saw something that transpired. He hasn't got the figures here, and can't back his opinion up with those details, so you will have to drop it right there, as far as he is concerned, I think.

Mr. Hart: We except.

Q. Mr. Sorenson, after you arrived at the net effective sand, and you made your adjustment for porosity, whatever that is. By the way, what variations of porosity are there throughout the field? Between what—you have adjusted to 26% porosity. What variations in porosity actually are there throughout the field?

A. Very little variation.

Q. Give us the figures, please, sir.

A. It is the amount of the shale within the sand section. The porosity of clean sand would be the same, no matter what the size of the sand grains.

Q. If you take Woodbine sand, is it all 26% porosity?

A. The sand itself?

Q. No variation as to that. If you take Woodbine sand, it is all 26% porosity, is that your statement?

A. Yes, sir.

[fol. 183] Q. When you get Woodbine Sand of 26% porosity, does it all have the same permeability?

A. No, sir.

Q. What are the variations in permeability?

A. You have them on that list there. It varies considerably.

Q. Can you give us an idea of that?

A. It varies from 100 milli d'arcys, to several thousand.

Q. And depending upon whether the permeability is an important factor in determining what the amount of recoverable oil actually will be under any particular lease, is it not?

A. No, sir, the amount of oil would be the same, since the porosity is the same, but its ability to give it up, or the rate it gives it up would be influenced by the permeability.

Q. The amount of recoverable oil is affected by the permeability of the net effective sand under any particular lease, is it not?

A. It depends upon the time. If you have the time, it will still give it up.

Q. If you have a relatively impermeable lease, a highly permeable lease, is it your statement there would be the same amount of oil recovered from that sand, if you gave them enough time?

A. You say an impermeable lease?

Q. Yes, if you have one with low permeability, and if you have another with high permeability, will there be the same amount of recoverable oil in the two leases?

A. It would depend on the position on the structure.

Q. Take the same position on the structure, assuming everything except the variation in permeability, does the [fol. 184] permeability affect the amount of recoverable oil under a lease?

A. If you have enough time, the relatively impermeable area will produce the oil.

Q. Will it produce the same amount as the other lease, if you have the same sand?

A. Substantially so, if you have enough time.

Q. I think that is all for the present, Mr. Sorenson.

Mr. Baker: May I ask the witness two or three questions, Your Honor.

Judge Sibley: Yes, sir, if it is important.

Redirect examination.

Questions by Mr. Baker:

Q. Mr. Sorenson, isn't it a fact that this Railroad Commission isopach map, Humble's Exhibit No. 4, is the map that is currently used by the Railroad Commission in determining the sand thickness of the various leases in the East Texas Field?

A. Yes, sir.

Q. From that isn't it proper to conclude that the Commission believes that it can determine the sand thickness, effective sand thickness in the East Texas Field?

A. That is evidently so.

Q. You said something a while ago about oil flowing through lenses, and if I understood you correctly, you said it could flow through shale lenses when a well penetrates a lense, and flows through the well bore; is that correct?

A. Yes, sir, through the well bore.

Q. You didn't mean to say the oil could flow through an [fol. 185] impermeable shale lense, did you?

A. No, sir, I didn't say that.

Q. If there is a lense, could the oil flow around it?

A. That is true.

Q. And the fact that a lense is present doesn't mean that the area can not be drained, does it, that is, the oil sand; it doesn't mean the oil sand couldn't be drained, does it?

A. No, sir.

Q. Now, just a word—I want to ask you a question or two about the water encroachment. Mr. Hart was asking you some questions about the water apparently not encroaching on a level plane in some places, according to these diagrams. Humble's Exhibit 6, I believe, would you or not

say that that would indicate that the water tends to flow up the bedding planes?

A. That section didn't indicate it was flowing up the bedding planes.

Q. Where it happens to run, say the water is flowing up the bedding planes—would you or not say it is flowing up the bedding planes because the permeability happens to be greater that way than vertically?

A. That would be true.

Q. Or directly lateral. Will you state why from time to time the estimates of recovery, the total recovery in the East Texas Field, have varied?

A. Well, they varied by the area extent of the field. As the productive acres varied, and also by the system of allocation of production. In other words, the top allowable and the system by which the field was produced.

[fol. 186] Q. Do you mean to say that as it has been produced more efficiently, the estimates of the ultimate recovery have increased.

A. Yes, sir.

Q. Is it or not a fact that the actual recoveries per acre foot have been greater than was originally thought probable?

A. Yes, sir, that is true.

Q. Has that had anything to do with the increase in the estimates of recovery?

A. Yes, sir.

Q. That is all.

Mr. Moody: May I ask the witness a few questions?

Judge Sibley: All right, sir.

Recross-examination.

Questions by Mr. Moody:

Q. Mr. Sorenson, you spoke about on the east edge of the field there were places where the sand was light, and where perhaps there was 75% of shale breaks. Can you estimate the approximate area of that portion of the field of which you were speaking when you said that was true.

A. I stated it was a very narrow band on the eastern portion of the field.

Q. Could you give it in acres, approximately?

A. No, I can figure it for you.

Q. Just state that into the record later. It is a small per cent, is it not?

A. Very small.

Q. Very small per cent of the area of the field.

[fol. 187] Judge Sibley: Four or five hundred feet wide, and forty miles long. Anybody can figure it that is interested.

By Mr. Moody:

Q. In our opinion, from the study you have made of the field, and the acquaintance that you have had with it, is it necessary to give wells in that part of the field a flat 20 barrels per well allowable while wells in the fairway or center of the field where the sand is the thickest and most permeable are only given 20 barrels as a minimum allowable, is that necessary in your opinion to prevent the waste of oil? By waste of oil, I mean premature abandonment of wells, loss of oil ultimately recoverable, or damage to wells?

A. No, sir.

Q. That is all.

Recross-examination.

Questions by Mr. Hart:

Q. What portion of the field were you speaking of then, Mr. Sorenson?

A. That narrow band to the east.

Q. Mr. Sorenson, if the Railroad Commission started today and prorated the field from now on each month on the basis of the recoverable reserves in place, that is, assigning to each lease in the field a percentage of the total field allowable, in the same percentage that those reserves bore to the total reserves in the field, and that was carried on from now to the end of the production in the field, would, under that method of allocation, each lease in the field get substantially the equivalent of the recoverable oil now in [fol. 188] place beneath those leases, or would some leases get much more, and some leases much less than the recoverable oil now in place?

A. As I understand, if I understand your question correctly, there would be no minimum given?

Q. Taking no minimum, and you examine—the Commission each month determined what the total recoverable reserves in the field were, and gave to each lease an allowable based on its percentage of the total recoverable reserves, would under this method of proration would—is it true or not that some leases would get much more than the recoverable oil now in place, and some much less?

A. No, it would approach the amount of that recoverable oil in place.

Q. You mean, you are taking into consideration the eastward migration of the oil, and is it your statement that under that method of proration the leases on the east side would get no more than the equivalent of the recoverable oil in place?

A. If they produced in accordance with what they have in place.

Q. Each month if the Commission allowed them to produce in accordance with the recoverable oil then in place, each period?

A. You would have to consider position on the structure.

Q. What do you mean by "you would have to consider position on the structure"? You mean by that, don't you, that if you don't give some factor, don't put some factor in the proration formula that will compensate for that eastward migration, you will necessarily have leases, say in the [fol. 189] middle and on the east, getting more than their recoverable oil in place, whereas, you will have some places on the west where they will be getting less than their oil in place?

A. That is probably true. You would have to consider position on the structure, and you haven't told me what top allowable you would consider.

Q. All right, sir.

Judge Sibley: Next witness.

Mr. Hart: May I ask you to do this, not now, but on Plaintiff's Exhibit 5 would you make an indication of that portion of the field that you say will produce longest? You told us that, what it was, about—will you draw a line down there where you think that will be.

Judge Sibley: We are fairly intelligent. He said after you get out of the 600 foot band, to the east, ten feet of sand, east of that, would be as good as any in the field.

Mr. Hart: Is that your statement?

A. Where you have a sand thickness great enough to make a good well, sufficient sand of good enough quality, that will be the longest producing area in the field.

Q. All right, sir.

(Witness excused.)

[fol. 190] T. V. Moore, a witness produced by the Plaintiff, having been first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Baker:

Q. Give your name, please.
A. T. V. Moore.
Q. Where do you live?
A. Houston.
Q. What is your occupation?
A. Research Engineer.
Q. For whom are you working?
A. Humble Oil & Refining Company.
Q. How long have you been working for the company?
A. Since 1927, with the exception of a short period.
Q. What has been the nature of your duties?
A. Since 1929 I have been in the Production Research Division of Humble's Research Department. Since 1933 I have been in charge of that work.
Q. Will you please give your additional qualifications?
A. Yes, in 1925 I received a B.S. degree from Virginia Military Institute. In 1926 I received a B.A. degree from Rice. In 1927 I received the degree of Chemical Engineer from Rice, and in 1929 I received the degree of Master of Science in Chemical Engineering from Massachusetts Institute of Technology.
Q. Have you had occasion to make a special study of the East Texas Field?
A. Yes, sir.
Q. What has been the nature of your study of the East [fol. 191] Texas Field?
A. We have made studies of the behavior of the field under the conditions under which it has been operated since it has come in. We have made studies of sources of energy

in the field, the character of the sand, the nature of the fluids in the reservoir, studies of the drainage of the oil, and the effect of the various orders of the Commission upon the field.

Q. Have you studied the effect of those various orders upon Humble Oil & Refining Company?

A. Yes.

Q. Have you had free access to all the data of the Humble Company with respect to the East Texas field?

A. Yes, sir.

Q. Are those data extensive?

A. Yes, sir, they are quite extensive.

Q. Will you briefly detail what the nature of those data are, is?

A. We have access and use the records of the Geological Department, consisting of a great mass of logs and electrical logs, core samples, core analyses in the field; we have the Production Department's records of the amount of oil produced by the field, and by the various leases in the field. We have records of the pressure and a great mass of information on the nature of the oil, gas, water, other pertinent facts pertaining to the fluid in the field.

Q. State whether or not you have studied and tried to digest all of this material?

A. Yes, sir.

Q. Have you considered the original reserves of the field [fol. 192] and the Humble's portion of those reserves?

A. Yes, sir.

Q. You heard Mr. Sorenson's testimony in that regard. Do you agree with him, or not?

A. I am in substantial agreement with Mr. Sorenson.

Q. Have you computed the percentage of, or production percentage, or field production that Humble Oil & Refining Company has produced up to this date?

A. Yes, sir.

Q. Or up to June 1, 1939, I believe?

A. Yes, sir, that is the date.

Q. What percentage of the oil produced in the East Texas Field up to that time had been produced from the Humble's leases?

A. 9.6% of the total field production.

Q. What do you find the Humble's reserves originally were, and now are?

A. Approximately 14.3%.

Q. Under that, what percentage of the accumulated field production has the Humble Company been denied an opportunity to produce, assuming that it had a right to produce in proportion to its reserve?

A. 4.7% of the field production, which is equivalent to above sixty-four million barrels.

Q. Do you mean to testify that under the orders as they have heretofore existed the Humble Company has been deprived of an opportunity to produce sixty-four million barrels of oil, assuming that it had a right to produce in pro-
[fol. 193] portion to its reserve?

A. Yes, sir.

Mr. Hart: If the Court please, I think that is—you are making an assumption, Mr. Moore, that they should have produced each time in proportion to their recoverable reserve, each time the Commission entered an order?

A. Yes, Mr. Hart. Essentially, according to Mr. Sorenson's testimony, we have always had very close to 14.3% of the total reserves in the field. It happens that the location of our acreage was such that we have maintained that approximate percentage. Having maintained that approximate percentage, and if we were entitled to produce in proportion to our reserves, then each order should have given us approximately 14.3% of the allowable of the field, and we have failed to produce that much oil by sixty-four million barrels.

By Mr. Baker:

Q. Do you have a diagram that will show that information you just testified to?

A. Yes, sir.

Q. Will you let us see that diagram, please.

A. On this diagram——

Q. Wait just a minute. Will you explain by wh[illegible] and how that diagram was prepared?

A. That was prepared in my department.

Q. And under your supervision?

A. Under my supervision, yes, sir.

Q. And do you believe it fairly represents what it purports to represent?

[fol. 194] A. Yes, sir.

Q. Will you please explain to the Court what the diagram means?

A. In this diagram the area of this outer circle up here is proportional to our estimate of the original reserves of the field. The area of the inner circle is proportional to the remaining reserves of the field, and this ring around the outside is proportional to the oil which has been produced. Now, this segment here of the circle, is 14——

Q. Is that a wedge?

A. Yes, sir, a wedge.

Mr. Hart: We object. I understood Judge Sibley to say that the Court isn't going to undertake to correct any past inequities that may have existed, and the Court isn't going into the story of the production in the past. I understand this diagram is for the purpose of showing that under a situation where the field wasn't prorated at all for several years, and where then it was prorated under a method of proration that has now been abandoned by the Railroad Commission, that the Humble was permitted to produce only a certain proportion of the oil in the field. Now, we object to that as being irrelevant and immaterial, in that it doesn't bear on the fairness of the present order.

Mr. Baker: If the Court please, I think he touched upon this in his own examination, and we think that there is a—we can show a relation here to the present order because [fol. 195] we think we can show by the Commission's own isopach map and their own records what the extent of our depletion has been, in order that we may tell what our remaining reserves are, and we think that bears upon this case.

Judge Sibley: I didn't mean by what I said to be foreclosing any important question of law. I may be wrong in that idea. It seems to me the Commission might consider the inequities of the past, but I doubt if it would be of much importance today for the Court to say the Commission ought to have done so. They insisting that ought to be proven, and having a bearing on the case, I think we ought to admit the testimony, although we might not agree to consider it later in the consideration of the case.

Mr. Hart: Then, both sides will be permitted to introduce evidence on that point?

Judge Sibley: I hate to open up a great field of contentions and speculation.

Mr. Hart: I want to understand so that we will know upon what basis to meet them. I would just as soon meet them on that basis as any.

Mr. Baker: Your Honor, we don't contend that the oil that we have been deprived of the opportunity to produce in the past has anything to do with what we ought to be allowed to do now; but we want to present these data to the Court. I have shown from the Commission's old records that we have certain reserves in the field at this time. This helps to prove the very thing that Mr. Hart awhile ago [fol. 196] seemed to be concerned about.

Judge Sibley: I don't think past production would help us on that. All those estimates have been revised again and again. Everybody was mistaken about it.

Mr. Baker: From these data we will be able to show what we now have and to what extent our property has been depleted, and what we now have, so it is important from that issue. It is not going to take but a few minutes.

Judge Sibley: Don't take much time, because everybody seems agreed that past inequalities cannot be remedied by this Court.

Mr. Hart: The figures they have given have to do with productions from their leases, and not depletion of their leases.

Judge Sibley: Go ahead quickly and tell us what you want to show.

A. This yellow portion of this diagram here is equivalent to 130 million barrels and represents Humble's past production. This 64 million barrels is the figure I quoted a minute ago, which shows the recoverable oil which has been drained from underneath our leases and has been recovered by other wells in that field.

Judge Sibley: You are guessing at that. They say that you have as much as you used to have.

A. On a percentage basis, I believe we have; but we have lost actual oil.

[fol. 197] Judge Sibley: That red represents what you would have had if they had let you go on a schedule you say they should have.

A. One thing I would like to explain. There are some of our leases located on the east side, and throughout that side there is as much oil under the field as there ever was. All of those leases over there on the east side of the field have not lost anything by drainage, and our leases over there have not lost anything by drainage either; but on the west

side of the field our leases have been drained to the extent not only of this 64 million barrels, but in addition thereto an amount of oil equivalent to this sum of 50 million barrels produced from these east side leases; so that this 64 million barrels represent only a net drainage.

Q. And that is after you have considered the amount of oil that has been gained by the Humble's east side leases it still has a net loss of 64 million barrels?

A. That is correct.

Q. Is that over the field as a whole?

A. From all of our properties in the field.

Q. Taking into consideration what has been gained by the Humble east side leases?

A. Yes, sir.

Q. Mr. Moore, you are familiar with the Commission's isopach map—this sand thickness map, Humble Company's Exhibit No. 4?

A. Yes, sir.

Q. According to that isopach map, how many acres feet [fol. 198] of sand were originally in the field?

A. 4,961 million and something.

Q. What has been the accumulated field production up to this time?

A. About 1,365 million barrels.

Q. How many acre-feet of sand in the field do you consider have been depleted up to this time?

A. One million and a quarter, or about one billion two hundred and 40 thousand.

Q. What is the recovery per acre foot?

A. These figures were based on my estimate of 1100 barrels per acre foot for production up to the present time.

Q. To June 1, 1939, what do you figure to be the remaining acre-feet of sand in that field?

A. Three billion 720 thousand, roughly.

Q. What about the acre-feet of sand under the Humble's property as of the same date?

A. Well, you mean originally? Or as of that date?

Q. Originally.

A. Originally that Commission map showed 707,770 acre-feet.

Q. What percentage is that of the whole?

A. 14.27 per cent.

Q. That is according to the Railroad Commission's map?

A. Yes, sir.

Q. What was the Humble's production up to June 1, 1939?

A. 131 million and a few barrels.

Q. How many acre-feet would be voided at the rate of 1100 barrels per acre foot?

[fol. 199] A. You mean assuming that there was no drainage?

Q. Yes.

A. And that we got just this 1100 barrels per acre foot?

Q. Yes, sir.

A. About 120 thousand acre-feet—119,400.

Q. How many acre-feet should Humble have had on June 1, 1939, if there had been no drainage from Humble's leases?

A. 588 thousand acre-feet.

Q. What percentage would that be?

A. 15.8 per cent of the remaining acre-feet.

Q. What is your conclusion from those figures?

A. I don't believe that we have that percentage of the acre-feet.

Q. What percentage do you estimate we now have?

A. I agree with Mr. Sorenson that we have about 14.3 per cent of the acre-feet.

Q. Do you or not conclude that the Humble had a net loss of so many acre-feet of sand by drainage, and if so how many?

A. About 56 thousand acre-feet of our sand was lost by drainage.

Q. What would that represent in barrels of oil?

A. That comes out 62 million barrels.

Q. At what recovery?

A. At 1100 barrels per acre-foot.

Q. Well, if those figures are correct, how many barrels of oil has the Humble lost from its lease by drainage net for every barrel it has produced?

A. For every barrel we have produced there has been about one-half barrel lost to us.

Q. Putting it another way,—for every two barrels we [fol. 200] have produced, we have had a net loss of one barrel by drainage from our property?

A. Yes, sir.

Q. Do you say that that is demonstrative from the Commission's original isopach map and the figures of production up to date?

A. Yes, sir.

Q. Now, then, if the Humble Company were now to have less—if it had now less than 14.3 per cent, would it have lost a still greater amount by drainage?

A. Yes, sir.

Q. Are you familiar with the Railroad Commission's orders of September 11, 1939; September 29, 1939; and January 24, 1940?

A. Yes, sir.

Mr. Baker: I would like at this time to introduce those orders of the Railroad Commission. I would like to introduce first the order of September 11, 1939, and the order of September 29, 1939, and the order of January 24, 1940.

(Thereupon the orders referred to above were introduced in evidence and were marked as Humble's Exhibits Nos. 8 and 8-A.)

Judge Sibley: Are there two orders of January 24, 1940?

Mr. Baker: Yes, sir.

Judge McMillan: Are those both supposed to be in effect, or does one supersede the other?

Mr. Baker: No, sir; I will introduce the other orders of the same date. There is another order of the same date.

[fol. 201] Judge McMillan: Which is effective?

Mr. Baker: Let me explain. There is a proration order of January 24, 1940, which is the proration order now in effect. It was for the month of February. At the same time the Railroad Commission issued a shut-down order for the East Texas Field effective for February, shutting down the field for 12 days out of the 29 days.

Judge McMillan: Excepting the marginal wells?

Mr. Baker: Yes, sir. And on the same date it issued a special order defining marginal wells.

Judge McMillan: Doesn't that statute provide for that?

Mr. Baker: Yes, sir. I was just introducing it for what it may be worth. I wish to introduce all three of these orders of January 24, 1940, also. Particularly, I should like to call attention to the paragraph, Rule 23 on page 2 of the order, which sets out the bases on which the East Texas Field is prorated. I will not take time at this time to read it, because we explained that this morning. Now, Your Honors, I would like also to introduce official proration schedule of the Railroad Commission, which is effective for the month of January. This shows the allowable—for

February, I mean. This shows the allowable for each well in the East Texas Field.

(Thereupon the orders and schedules referred to above were introduced in evidence and were marked as Humble's Exhibits Nos. 10, 11, 12, and 13.)

[fol. 202] Q. Turning to the proration order of January 24, 1940, which is in effect for the month of February, what top allowable does it fix for the field?

A. 691,301 barrels.

Q. How many wells on the proration schedule producing?

A. 25,907.

Q. How many wells are classed by the Commission as marginal wells?

A. 514 wells that have a production of 6,245 barrels.

Q. Will you please state the basis of allocation and the number of barrels that will be allotted under the basis of allocation used?

A. Yes. The production from the marginal wells is not affected by the Commission's orders.

Q. About how much does that amount to per day?

A. It is a negligible quantity. It is less than one per cent of the scheduled allowable.

Q. Would 6,245 barrels sound about right?

A. I gave you that figure.

Q. Excuse me. Now, what does it allot to each well that is capable of producing more than 20 barrels per day?

A. It gets a flat 20 barrels per day plus an additional amount of oil.

Q. How many wells are there that get this flat 20 barrels per day?

A. 25,465 wells get 20 barrels a day.

Q. What percentage of the field allowable is that after deducting the marginal well allowable?

[fol. 203] A. About three-fourths of the field's allowable —74.4 per cent.

Q. Is or not that allocated to wells just because they are wells?

A. Yes, sir; every well gets 20 barrels.

Q. Does that mean that about 75 per cent of the field allowable is divided between wells just because they are wells?

A. Yes, sir.

Q. What percentage of the total field allowable does this equal?

A. About 73.6 per cent of the total.

Q. How much oil out of the schedule top allowable does that leave to be prorated between the larger wells in the field that are capable of producing 20 or more?

A. 175,936.

Q. What percentage of this is the total allowable after deducting the allowable for marginal wells?

A. 25.4 per cent.

Q. What per cent is it of the total field allowable?

A. I believe that would be around 26 per cent.

Q. The figures will speak for themselves?

A. Yes, sir.

Q. What percentage of the field allowable is left to prorate between the wells under the formula used?

A. 25.4 per cent.

Q. About one fourth of the field allowable?

A. Yes, sir.

Q. What are the factors used by the Commission in prorating this 175,000 barrels between the 25,000 odd wells in [fol. 204] the field?

A. Acreage, sand thickness, potential, and bottom hole pressure.

Q. Just how do they use those?

A. For each well they multiply these various factors and then assign to that well an allowable which is to the field allowable as the product of all these factors for that particular well is to the sum of all those products of all those wells in the field.

Q. As a fraction, how would you state it? What would be your numerator and what would be your denominator?

A. Your numerator is the product of these factors for some particular well.

Q. Acreage, sand thickness, potential, and pressure?

A. Yes, sir. Your denominator is the sum of these products for all the wells in the field.

Q. What do you do with that fraction?

A. You multiply it by this 175,000 barrels of oil which is left out of the schedule allowable after giving the 20 barrels per well.

Q. And then is that added to the 20 barrels in order to determine what the actual allowable for that well will be?

A. Yes, sir.

Q. And the total allowable?
A. Yes, sir.
Q. Is that given just to the best properties in the field and the best wells, or is it distributed to all the wells capable of making more than 20 barrels?
[fol. 205] A. Each well gets its pro-rata part of this 175,000 barrels. Each well gets its pro-rata part of it except the marginal wells.
Q. That means a well on the east side of the field with two or three feet of sand and on a very small tract, one tenth of an acre, say, would still participate by the use of these factors just the same as the wells in the fairway with 100 feet of sand and drilled on five or seven tenths of acres?
A. Yes, sir.

Judge McMillan: Could you have this witness tonight take one well and figure it out to show specifically how this formula works?
Mr. Baker: We have those and will present them in the morning.
Judge McMillan: It would be a whole lot clearer to see it than to read it.

Q. Under the shut-down order the field has produced only 17 days in February?
A. Yes, sir.
Q. That means the average actual well allowable for the month will be only seventeen twenty-ninths of the schedule allowable?
A. Yes, sir.
Q. Does that mean that your total allowable and the amount of oil allocated on the flat basis and the amount allocated under the formula are proportionately reduced?
A. Yes, sir.
Q. Give us the actual figures quickly so that the Court [fol. 206] can get an idea of how much goes to marginal wells and how much goes on the 20 barrels basis, and how much goes on the formula, actual average over the month.
A. Marginal wells continue to get the 6,245 barrels that they have on the schedule. The per well allowable takes 298,450 barrels; and the allowable in addition to the per well allowable is only 103,135 barrels.
Q. You mean that is the pro-rated oil?
A. Yes, sir.

Q. What percentage is that pro-rated oil of the total actual average allowable?

A. 25.3 per cent.

Q. What is the total field allowable on the average then—actual average over the month?

A. 407,830.

Q. Now, will you compare the increase in allowable to the properties in the field as a whole and to the Humble properties under the order of June 19 and under the order for February?

A. Under the order of June 19 Humble got approximately 9.93 per cent of the field allowable of 523,000 barrels or 52,000 barrels daily allowable.

Q. Now, what would it get under the present order if it received 9.932 per cent? In other words, what would it receive with the present top allowable if it were pro-rated under the order of June 19?

A. 68,600 barrels.

Q. How much more is that than what it got?

A. 16,600 barrels increase.

[fol. 207] Q. Is or not that due entirely to the increase of top allowable for the field?

A. Yes, sir.

Judge Allred: What percentage is that increase?

A. It would be about a 30 per cent increase—a 30 or 35 per cent increase. I have not the exact figures.

Q. You are talking now about the increase that is due to the increase in the top allowable. What percentage is that of the total increase?

A. Well, that is 66 per cent of the increase in allowable that we actually got under the order.

Q. That is the answer that you wished to give to Judge Allred, was it not?

A. I understood Judge Allred's question was—under this hypothetical set of facts what per cent of increase was it over the order of June 30.

Judge Allred: That is what I meant.

Mr. Baker: Excuse me.

Q. What is the actual allowable on the Humble under the schedule per day?

A. 77,000 barrels.

Q. That is on the days that it is permitted to produce?

A. Yes, sir.

Q. What percentage is that of the total field allowable?

A. That is 11.17 per cent of the field allowable.

Q. Now, of this increase that the Humble got under the February order as compared with the June order, how many barrels of that was due to the operation of this formula in the order of February?

[fol. 208] A. 8,400 barrels.

Q. What percentage is that of the increase that Humble got under the February order as compared with the June order?

A. That would be a 34 per cent increase.

Q. So 66 per cent of the increase is due to the increase in the top field allowable, and 34 per cent of the increase is due to the operation of the formula?

A. Yes, sir.

Q. Now, under actual production, the Humble actual production average over the month will be proportionately reduced, will it not?

A. Yes, sir.

Q. What would you say is the total that the Humble Company is losing per day in allowable production, assuming that this production should be in proportion to its reserve?

Mr. Hart: If the Court please, I object to the question in the form he stated it. You mean how much less they are getting, don't you?

Mr. Baker: That is what I meant.

Q. How much less are they getting under the present order than if that other formula was adopted? What I mean is this,—The Humble, he testified, is getting 11.17 per cent of the field allowable. Assuming that it was entitled to 14.3 per cent of the field allowable, how much more per day would it receive?

A. In order to get 14.3 per cent of the allowable, our present allowable would have to be increased by 29 per cent. It would then be 88,000 barrels. The increase in barrels would be 21,600 barrels a day.

[fol. 209] Q. Now, Mr. Moore, have you considered the effect of this 20 barrels minimum on the distribution of oil in the East Texas Field between properties?

A. Yes, sir.

Q. What is the effect of that with respect to densely and less densely drilled properties?

A. It permits the more densely drilled properties to produce at a rate considerably higher in proportion to the reserve, and the less densely drilled properties are permitted to produce a lesser amount in proportion to reserve.

Q. Is that also true with respect to those wells that are on thin sand as compared with the wells on the thick sand?

A. Yes, sir; the wells in the thickest part of the field do not participate in the allowable in proportion to the reserve; and in the thin sand parts of the field those wells participate to a greater extent than in proportion to their reserves.

Q. Now, assuming that the Humble Company is losing at the rate of 21,000 barrels a day or would get 21,000 barrels a day more if this were allotted its production in comparison with its reserve rather than on the present basis, have you estimated what that would amount to during the balance of the producing life of the field, approximately?

A. Yes, sir. You mean that assuming that an order continues in effect which continues to give the Humble its 11.17 per cent?

Q. Yes.

A. Under that set of facts the Humble would lose approximately 100 million barrels from its present reserve.

[fol. 210] Q. Could that be illustrated on your diagram over here?

A. Yes, sir.

Q. I believe that is Exhibit No. 9?

A. Yes, sir.

Q. Will you briefly explain that to the Court?

A. Yes, sir. This entire blue triangle here is proportional to Humble's remaining reserve of about 520 million barrels. Now, the lightly shaded portions in here represents the oil that Humble would have an opportunity to recover if the order was continued in effect which continually gave it 11.17 per cent of the field allowable. The loss here would be about 100 million barrels. Whereas their reserves are now 520 million barrels, why they would have an opportunity to produce some 400 million barrels, and somebody else would get the 100 million barrels difference.

Q. What percentage is that of our reserves?

A. About 20 per cent.

Q. About one fifth?

A. Yes, sir.

Q. Now, have you considered what the result would be, assuming the continuation of the present order during the balance of the producing life of the field, if the Commission month after month continued the same kind of order now in effect—have you considered that?

A. Yes

Q. Have you made some calculations on it?

A. Yes.

Q. Do you think those calculations are correct?

[fol. 211] A. Yes, sir; they are reasonably correct.

Q. You don't say that you can figures those things down to mathematical exactness, do you?

A. No, sir; you can't do that.

Q. Are they within the range of reasonable correctness, in your opinion?

A. Yes, sir.

Q. Now, what results did your computation le-d you to?

A. They led me to believing that if the present order was continued in effect that the Humble would lose somewhere between 45 and 85 million barrels.

Q. If the present order were continued in effect?

A. Yes, sir.

Q. What would that amount to in dollars at the present value of oil?

A. Oh, somewhere from 50 to 95 million dollars.

Q. Do you believe, based on comparative reserve, that the Humble's loss will amount to that if this order or an order similar to it were continued in effect during the balance of the productive life of the field?

A. What I meant to say is that we will fail to produce the recoverable oil that is now under our property by this amount.

Q. By that amount?

A. Yes, sir.

Q. Now, what happens to that oil?

A. It is produced through other wells.

Q. Does that mean, in your opinion, that if this order or an order similar to it is continued in effect during the [fol. 212] producing life of the field that much of our reserve will be taken and given to somebody else?

A. Yes, sir.

Q. State whether or not, in your opinion the Humble has drilled sufficient wells on each of its leases in the East Texas field to produce the recoverable oil without waste if the Commission were to so adjust our allowable as to permit the Company to do so?

A. It has, yes, sir.

Q. Have you made a real study of that matter?

A. Yes, sir; a very intensive study of that matter.

Q. That is your deliberate conclusion, is it?

A. Yes, sir.

Q. Now, Mr. Moore, have you given consideration to specific examples showing how this lease operates—I mean how this order of February operates to the disadvantage of the Humble Company?

A. Yes, sir.

Q. Will you present those tables at this time?

A. Yes, sir; I have tables prepared.

Q. Let us have them.

A. All right.

Mr. Baker: Would the Court like to have copies of these?

Judge Sibley: Maybe you would like for us to have them.

Q. Now, Mr. Moore, were these tables compiled to show the actual operating effect of this order upon the allow-
[fol. 213] able for the leases that are indicated?

A. Yes, sir.

Q. On these various charts and tables?

A. Yes, sir.

Q. Have you checked these compilations and do you believe they are correct?

A. Yes, sir.

Mr. Baker: We wish to introduce some of these tables. There are four of them, I believe and they will be the Humble Company's next four exhibits. We have them named here Table I, Table II, Table III, and Table IV-A and Table IV-B. Tables IV-A and IV-B may be considered as one.

Mr. Hart: I have not had a chance to look these over yet. I don't know what other objections I may have, but I object to Table I, because there is no showing as to where these leases are located. Are all these Humble leases? On this Table I there is no showing of where these other leases are located, whether adjoining, or in what portion of the

field they are located. Whether they are producing more or less would not have any bearing on the Humble's recovery at all.

Judge Sibley: I understand that he wants to examine the witnesses in reference to that?

Mr. Hart: I thought he was now offering them.

Mr. Baker: I can offer them now or later.

Mr. Hart: I object to them now. I don't think they have been sufficiently proved up.

Judge Sibley: That objection is evidently good now. You will have to prove them up by the witness. This seems [fol. 214] to be a comparison of the Humble's leases in three different places with somebody else's leases.

Mr. Baker: As a matter of explanation, I will say that the Humble Company's supplemental complaint, as I remember it, gave the information contained here with respect to the particular leases. We allege that we were suffering these losses in the particular leases, as compared with the operators who were operating other leases in the vicinity, and we are merely offering this table for the purpose of substantiating our allegations.

Judge Sibley: I suppose that he can testify that he made this and that it is correct, but I will have to sustain the objections to the tables because they have not been proven or identified in any way up to the present time.

Mr. Baker: I asked him if he had checked them and found them to be correct, and he answered that he had.

Judge Sibley: But he did not say what these leases are.

Mr. Baker: We can identify them on the map.

Judge Sibley: That is his objection, that you have not asked him about them.

Mr. Baker: I will withdraw the introduction of these at this time and shall introduce them later.

Q. What does this Table No. I purport to show, Mr. Moore?

A. This Table No. I gives three examples for comparison between the allowables on the Humble's leases and near-by leases. It shows the lease and the location of the lease, [fol. 215] the number of wells, the productive acres in the lease, the sand thickness, the number of acre feet of sand, the daily allowable, and the allowable per day per 100 acre-feet of sand, and the ratio of the allowable of the nearby

leases per 100 acre-feet of sand to the allowable of the Humble's leases per 100 acre-feet of sand.

Q. Take the illustration No. 1 here. Will you tell what leases are compared and where they are located?

A. Yes, sir. Do you want me to point them out on the map?

Q. Yes. Mr. Hart seems to want it done.

A. This first example is the Humble's Killingsworth lease in the Hathaway & Ferguson Survey. It is this lease right here (indicating).

Q. Where are the other leases that it is compared with?

A. It is compared with four other leases—not necessarily offset leases, but leases located in the same general vicinity. One is the Yeager & Schubert Finley-Thomas lease in the C. Alexander Survey.

Judge Sibley: You are not claiming natural drainage for these, but simply showing unequal application of the order, as I understand it?

A. Yes, sir.

Q. Just tell us the surveys. It will take us some time to locate them on the map. You will notice it gives the name of the lessee and the lessor and the location of the lease in the survey.

Mr. Hart: Mr. Moore, how far are those two leases apart?

A. In that particular case they are probably about two [fol. 216] and a half or three miles apart.

Mr. Hart: We wish to object to this line of testimony as being irrelevant and immaterial. You could pick out examples in any field where certain inequalities exist if you adopt a certain standard, and we object to this as being a waste of the Court's time and accomplishing nothing.

Judge Sibley: It does look like the Humble's complaint would have to be with reference to the whole field, as they are hurt whenever they fail to get what they ought to get with reference to the whole field.

Mr. Baker: We say, taking it over all, we are hurt, and we are endeavoring to show wherein we are hurt and to what extent. Not only that, but we say that this order in its operative effect is discriminatory against the Humble on the west side, and in the fairway, or on the east side; and furthermore, we say it is discriminatory against the Humble Company in that more oil is given the densely drilled area than to the less densely drilled area.

Judge Sibley: You might pick out thirty or forty leases favored by the operation of this order, and they might come back and pick out as many more that were not.

Mr. Baker: We can show these as specific examples. I think this is pertinent because they are producing from the same oil field under the same order, and it shows that from the same oil field these other people are getting anywhere from three to twenty-four times per 100 acre-feet more oil per day than the Humble is permitted to produce [fol. 217] from its leases in the same field. We are offering this to show the discrimination as effected by this order on the Humble Company.

Judge Sibley: Well, it might be permissible to show extreme cases, but I don't think you can win your case there.

Mr. Baker: We don't rest our case on this alone. This is just one of many things that we say is pertinent in order to show how this order operates and its effect upon the Humble Company.

Mr. Hart: We object to it as being irrelevant as proving the ultimate issue. In any field as vast as that, you can pick out any number of inequalities, and we could pick out any number of cases where the Humble is being favored.

Judge Sibley: I don't think we could get anything from that except that the order is not operating evenly. We will recess until tomorrow morning.

(Thereupon, at 5:00 o'clock P. M. Tuesday, February 13, 1940, the hearing was recessed until 9:00 o'clock A. M. Wednesday, February 14, 1940.)

[fol. 218] Wednesday, February 14, 1940.

Morning Session, 9:00 A. M.

T. V. Moore, a witness called by plaintiff Humble Oil & Refining Company resumed the witness stand, and continued his testimony as follows:

Direct examination continued.

Questions by Mr. Baker:

Judge Sibley: Proceed, Mr. Baker.

Mr. Baker: If the Court please, we were offering in evidence some tables here that were designed to show the over-

all effect of this order on the field. I think the tables show a two-fold purpose: One is to show the over-all effect in the field and in different parts of the field; and the other is to show specific instances of the effect that the order has upon the plaintiff. That is important, because we say we had an over-all loss. We have suffered an over-all loss; and we are suffering an over-all loss; and we will continue suffering an over-all loss; and those over-all losses must be made up of specific instances; and here are specific instances which will go to substantiate what we say there, and at the same time show the effect of these well densities, and show the effect of the order with relation to different parts of the field. I don't see how in the world we can make our proof complete unless we can introduce tables of this kind to show how the order actually operates.

Judge Sibley: Any objections?

Mr. Hart: Yes, sir. We make the objection that the [fol. 219] Humble cannot show injury to itself by showing inequalities as between its properties and certain other leases two and a half or three miles away from it. The only way they can establish they are being injured by this order is by showing by the over-all picture that they are not getting their fair share of the oil. In any field this big you can find examples of inequalities, and picking out individual cases where they say they are hurt simply clutters up the record. There is no proof in this first table that these leases will have any actual effect on the drainage of any of their leases; and the effect of that is to give an erroneous and inaccurate impression, and it does not go to the real issue in the case.

Judge Sibley: The basis of the comparison is the actual capacity of the several leases?

Mr. Hart: No, sir; it is not capacity at all. They pick a special method of comparison. They pick an acre-foot of sand method of comparison, and then compare it on that basis.

Judge Sibley: That is what I mean—the oil that is supposed to be under the lease, according to the amount of oil-bearing sand under that lease?

Mr. Baker: Yes, sir.

Judge Sibley: Doesn't that get down to this—if that is the scle thing to be considered, then this order evidently operates unequally, because it only computes one-fourth of

the oil on that basis, and three-fourths is distributed on a per well basis. The fundamental basis of the order is [fol. 220] that then, and if that is the basis on which proration would be effected, it is self-evident, then, the order would have to fall.

Mr. Baker: We can't make our picture complete unless we can show the effect of this order on us.

Judge Sibley: Yes; you will have to show injury.

Mr. Baker: It will show injury to drainage.

Judge Sibley: I think it is self-evident that the order does not follow that basis, but that it puts the per well idea in it very largely.

Mr. Baker: We can show proof of its operative effect.

Judge Sibley: The operative effect is due to the fact that wells are more densely drilled according to the oil sands on these leases that you compare with.

Mr. Baker: That is part of it, and part of it is due to the fact——

Judge Sibley: I think you are entitled to prove it, but I hope you won't put too much time on it, because the thing is self-evident.

Mr. Baker: I think we can expedite it a great deal. My only purpose is to introduce it generally, and let Mr. Moore show these comparisons, and I don't think it will take but a short time.

Judge Sibley: I expect you are entitled to give the illustration, but cut it short.

Q. Mr. Moore, I believe yesterday you said you had examined these statements and that you had checked them against the data from which they were compiled, and that they, in your judgment, are fair representations of what [fol. 221] they purport to represent. Is that correct?

A. Yes, sir.

Q. Mr. Moore, will you explain Table No. I—briefly explain it, and then read off these ratios in the right-hand column, and make it as brief as you can.

A. This table shows for three different areas in the field the conditions about a lease of ours and several typical leases in the general neighborhood. They are not necessarily offset leases, but may be a mile or two away. It shows in this example picked in the Longview district there is another lease, not a Humble lease, which gets 3.8 times as much oil in comparison to its reserve daily as the Humble; that

another gets 18.2; another gets 3.6; and another, 6.7 times as much as the Humble gets, in comparison with its reserves. Examples are given in the Kilgore district in which a well gets 8.8, and 20.4, and 3.7, and 9.9 times as much as the Humble gets. The third example shows the same type of data in the Henderson district, showing examples of other leases getting 3.6 and 24.1 times as much as the Humble gets.

Q. Where is the Longview district? In what part of the field?

A. That is in the northern part of the field.

Q. Where is the Kilgore district?

A. About in the middle.

Q. Where is the Henderson district?

A. That is in the southern part of the field.

Mr. Baker: I would like to introduce this Table No. I as Humble's Exhibit No. 14.

(Thereupon, the Table referred to above was received in [fol. 222] evidence and marked as Plaintiff Humble's Exhibit No. 14.)

Judge Sibley: These leases that you are comparing your leases with, are they similarly situated on the structure, with reference to the probable length of time they will produce?

A. Approximately. Not exactly, but very closely.

Q. Take Table No. II, and state to the Court what it shows.

A. This shows similar examples for offset leases—not leases in the general vicinity, which may be two or three miles from our lease with which we are comparing—but it shows the same type of data on leases adjacent to our leases; and we have several examples here in the Longview district. One shows three offset leases which are getting 1.5, 1.9, and 1.5 times as much oil in comparison with reserves as the Humble is getting. Another example shows from 1.4 to 2.9 times as much. A third one shows from 1.5 to 4 times as much. And a fourth one here shows from 1.8 to 8:5 times as much. Then in the Kilgore district there are three examples given. In one case offset leases get from 1.3 to 2.3 times as much as the Humble gets; in another from 3.6 to 27.3 times as much as the Humble gets; and then in another one, from 1.6 to 37.8 times as much as the Humble gets. In the Henderson district two examples are given, one of

which show offset leases getting 2 to 3.6 times as much as the Humble gets; and the other show from 1.4 to 4.1 times as much as the Humble gets.

Mr. Baker: I would like to introduce this Table No. II as Humble's Exhibit No. 15.

[fol. 223] (Thereupon, the Table referred to above was received in evidence and marked as Plaintiff Humble's Exhibit No. 15.)

Q. Mr. Moore, take Table III and tell us what it shows.

A. Table III illustrates the effect of well density on the operation of this order. It shows the number of wells which have been drilled on tracts, ranging from zero up to .49 of an acre in size. It shows there are 159 wells on such tracts. It presents the pertinent data on these tracts, and shows the daily allowable in barrels per hundred acre-feet of sand average for all the wells on this size tract here 204.1 barrels. Wells drilled on tracts between .50 and .99 of an acre get an average allowable of 68 barrels per hundred acre-feet of sand. From 1.00 to 1.49 acres they average 43 barrels per hundred acre-feet. From 1.50 to 2.00 acres they average 29.6 barrels per hundred acre-feet. The Humble's properties averaged 10.9 barrels per hundred acre-feet of sand, and the average for the entire field, excluding the Humble's properties, was 14.4 barrels per hundred acre-feet of sand.

Q. This shows, in effect, then, that the allowable production is in inverse ratio to density, is that correct?

A. Yes, sir; almost.

Q. Almost in that proportion?

A. Yes, sir.

[fol. 224] Mr. Baker: We introduce that Table in evidence.

(Thereupon, the Table referred to above was received in evidence and marked as Plaintiff Humble's Exhibit No. 16.)

Q. Explain Table No. IV-A, Mr. Moore.

A. This Table No. IV-A is a table which illustrates how the west edge and the east edge are given greater allowables in proportion to their reserves than the fairway. This data is also presented on a chart, but it shows here that for a number of actual examples, that the allowable ranges from 38.7 on the west edge, and gradually decreases as the sand thickness increases to 8.30 in the center of the field, and then

increases again until on the east edge it has gotten up to 46.0 barrels per hundred acre-feet of sand.

Q. Is that a gradual range of decrease from each edge of the field down to the center of the fairway?

A. Yes, sir.

Q. Does this chart show that the allowable is practically in inverse ratio to the sand thickness?

A. Yes, sir.

Q. The thicker sands get a great deal less per acre-feet than the thin sands?

A. Yes, sir.

Mr. Moody: Those are all based on one well to five acres, aren't they?

Q. What is your density there? Is it approximately one well to five acres?

A. It is not exactly that. The figures that I just quoted were actual examples, and the drilling density of the exam-
[fol. 225] ples ranges from 4.43 acres per well up to 5.86, I believe is the highest.

Q. Why were tracts of this density selected?

A. Because they were in the approximate range of the average well density of the field.

Q. That is designed, then, to show what happened as between the east edge and west edge and the fairway under practically average conditions?

A. Yes, sir.

Mr. Baker: I would like to introduce this table in evidence as Humble's Exhibit No. 17.

(Thereupon, the Table referred to above was received in evidence and marked as Plaintiff Humble's Exhibit No. 17.)

Q. Now, explain Table IV-B, Mr. Moore.

A. Table IV-B is very similar to Table No. IV-A; the only difference between the two is that instead of quoting the exact allowables from the schedule as we did in Table IV-A, we put all of these examples on a comparable basis and figured what the allowable would have been if they had all been drilled to a well density of exactly one well to five acres.

Q. What do your figures show as to the allowable per hundred acre-feet per day?

A. It shows essentially the same thing as Table IV-A, ranging from about 41 barrels on the west edge, and de-

creasing as the sand thickness increases, until in the fairway it reaches 8.62 barrels per hundred acre-feet, and then increases until on the east edge it is up to 41 barrels per [fol. 226] hundred acre-feet.

Q. Then, on the west edge and on the east edge the recovery per acre-foot per day on comparable five acre tracts, would be about eight times as much as in the middle of the fairway?

A. No, sir; five times as much.

Mr. Baker: I wish to introduce that as Humble's Exhibit No. 18.

(Thereupon, the Table referred to above was received in evidence and marked as Plaintiff Humble's Exhibit No. 18.)

Q. Have you prepared a chart that illustrates graphically the data in the last two tables?

A. We have such a chart here, yes, sir.

Q. Who prepared this chart?

A. That was prepared in our Geological Department from these tables.

Q. You are familiar with the chart?

A. Yes, sir.

Q. You have studied it, and know what it purports to represent?

A. Yes, sir.

Q. And will you say whether or not, in your opinion, that is a fair representation of what it purports to represent?

A. Yes, sir; I believe it is.

Q. Will you please explain it to the Court?

A. This green and blue figure at the bottom is a diagram-atic cross-section of the East Texas field.

Q. Explain that a little further, Mr. Moore, about the [fol. 227] diagram-atic cross-section.

A. This green portion of the chart illustrates the oil-bearing section in the field. Above this oil-bearing section is the impervious rock which serves as a trap for the oil. Below is the impervious rock which represents the lower limit of the oil sand; and the blue over here shows the approximate position of the water table originally, showing how in the western half of the field the oil-bearing sand is underlain by water, and how the thickness of the oil-bearing section is very small on the west, and increased to a maximum in the center of the field, and then again decreases to the east.

Q. What does that show about the slope of the structure?

A. It shows the slope of the structure as very flat.

Q. Which way is it inclined?

A. It is lower on the west and higher on the east.

Q. The highest elevation in the field, then, is on the east side?

A. Yes, sir.

Q. Explain the other part of the chart.

A. These colored figures on the top row present the essential data for each of these typical wells which were selected throughout the field. The green line represents the thickness of the sand in each of these wells, showing it to be thin on the east, increasing to a maximum of about 100 feet in the center, and decreasing again to about 10 feet in the case of this Grace Oil Company's well on the extreme west. The yellow line here shows the daily allowable which each of these wells is granted on the schedule. This daily allowable [fol. 228] increases a little bit from a little over 20 on the extreme east up to about 45 in the fairway for this well with 100 feet of sand, and decreasing again to a little over 20 for this well with 10 feet of sand.

Q. Does that represent the actual condition as it existed with respect to the wells that you show in these tables?

A. Yes, sir.

Q. Which table was that?

A. Table IV-A.

Q. What do the red lines show?

A. The red line shows how the allowables in proportion to the reserves, vary from about 40 barrels per unit of reserve down to about a little over 8 barrels per unit of reserve.

Q. Where is the greatest amount of production in proportion to reserve?

A. On the west and east edges.

Q. Where is the lowest?

A. In the fairway. This well with 100 feet of sand has the lowest. These diagram-atic tanks and wells here illustrate that same data, showing in another way the daily allowable granted per unit of reserve for this row of wells, showing that those on the edges, it is approximately five times as great as it is in the center of the field.

Q. Now, going back to that cross-section of the East Texas field.

A. All right.

Q. That is drawn to scale, is it?

A. It is drawn to scale, but the vertical and horizontal scales are different.

[fol. 229] Q. Why are they made different?

A. Because if the horizontal scale were made the same as the vertical scale on this map, we would have a cumbersome chart that would probably go thirty or forty feet out here. It would be entirely too cumbersome and too long a chart.

Mr. Baker: I would like to introduce this chart as Plaintiff Humble's Exhibit No. 19, and will ask that it be marked.

(Thereupon, the chart referred to above was received in evidence and marked as Plaintiff Humble's Exhibit No. 19.)

Q. Have you considered some hypothetical cases to show how this present order for the East Texas field would work?

A. Yes. You mean with respect to well density?

Q. Yes, sir; with respect to well density.

A. Yes, sir.

Q. Consider two adjacent leases on the west side, each of them having five acres, and each having ten feet of sand, and one of them having one well, and the other having five wells on it. What do you find will be the allowable for one tract, and the allowable for the other tract, assuming 450 barrels per hour potential and 1125 pounds per square inch pressure?

A. The tract with one well would have 21.1 barrels per day allowable, and the tract with five wells would have 101.1 barrels per day. They are typical west side tracts.

Q. Practically five times more?

A. Yes, sir.

[fol. 230] Q. Do you mean to say those tracts would have the same acreage exactly?

A. Yes, sir.

Q. And they would have exactly the same amount of acre-feet of sand?

A. Yes, sir.

Q. And the same pressure and the same potential, and yet, one tract would get five times as much as the other under this allowable?

A. Yes, sir.

Q. We will consider two adjacent leases in the fairway, each having five acres, each having 90 feet of sand, each having a potential capacity of 1000 barrels per hour, and

each having 1075 pounds per square inch pressure; but one tract has one well on it, and the other tract right alongside it has five wells on it. Have you computed what the allowable would be under this order for each of those tracts?

A. Yes, sir. The tract with one well would have an allowable of 40.4 barrels, and the tract with five wells would have an allowable of 120.4 barrels.

Q. What is the ratio?

A. About three to one.

Q. You mean to say those tracts are lying right together in the fairway, each has five acres, and each has the same sand thickness, and the same pressure, and the same potential?

A. Yes, sir.

Mr. Hart: I object to this line of questioning, because there is no proof of any such situation existing in the field. [fol. 231] It is assuming something that does not actually exist.

Judge Sibley: That is really self-evident argument; but just as long as the thing is not prorated on the things that you contend for, of course, these differences exist. The question we have before us is whether you are right in saying that the existence of the wells ought to be disregarded.

Mr. Baker: I will not prolong the matter.

Judge Allred: Is the real vice in this order, as you see it, the fact that you are not receiving sufficient consideration for undrilled acreage in the allowable?

A. I don't understand what you mean by "undrilled acreage".

Judge Allred: That you are not receiving consideration for acreage.

A. Not acreage alone; for reserves.

Judge Allred: What goes into the reserves besides acreage? You have been giving these illustrations of wells on the west side, one well of five acres having an allowable of about 21 barrels.

A. Yes, sir.

Judge Allred: And five wells on five acres having an allowable of 105 barrels.

A. Yes, sir.

Judge Allred: Isn't the vice that you complain of the fact that the Commission has not allowed the Humble additional production for the five acres, although it has only one well

on it, but has allowed production to the same size tract with five wells on it—five times as much production?

[fol. 232] A. I believe that is correct. Here is what will happen under the order,—that we will not be able to produce the recoverable reserve now under our properties under this order.

Judge Allred: Unless you drill additional wells.

A. If we drilled down to a well density which was greater than the average for the field, then we could recover the oil, but we have not drilled our properties that densely.

Judge Allred: Has the Commission allowed you to drill all the wells that you wanted to?

A. I don't know.

Mr. Baker: Your Honor, we have a comparable picture for a well on the east side, but it is similar to the one on the west side, and I will not take time to put that in.

Q. Have you prepared some charts or had some prepared, showing the ratio of the difference in allowables for different tracts under different conditions?

A. Yes, sir.

Q. Will you show us those charts, please?

A. This chart shows the well density and distribution of oil among the various leases in the field which are comparably located on the structure. By "comparably located on the structure", I mean that if they had all been drilled to the same well density, they would have all obtained the same ultimate recovery in proportion to their reserves.

Q. Who prepared that chart?

A. I did. It was prepared under my supervision.

Q. You feel that it accurately represents what it purports to represent?

[fol. 233] A. Yes, sir.

Q. Explain the chart to the Court, please.

A. Each of these squares represents a lease in the East Texas field along a section which I believe is comparably located on the structure. The width of each of these rectangles is related to the size of the lease. The height of the rectangle shows the proportion that the recovery from the lease and the current allowable bears to the average recovery and the average current allowable of all the leases simi-

larly located on the structure. The yellow rectangles here are the Humble leases; the green are the leases of others.

Q. What area is that in?

A. This is through the John Johnson lease, in the Thompson, Allen, and Willie Goodwin Survey. It is around Gladewater somewhere.

Q. What does that show?

A. It shows that one of these leases—in this particular chart it shows that the Humble-Della Johnson lease will get 84 per cent as much oil as the average lease similarly located on the structure. It shows varying larger recoveries for larger leases, the highest being the T. W. Lee, one well on a half acre, which produces 99.3 per cent as much as the average lease.

Q. What are some others? Read these as fast as you can. You had all of these charts prepared, did you not?

A. Yes, sir.

Mr. Baker: I would like to introduce that as the Humble's next exhibit.

[fol. 234] (Thereupon, the chart above referred to was received in evidence and marked as Plaintiff Humble's Exhibit No. 20.)

Q. Now, rapidly state what that chart represents—what that is, and what it represents.

A. This is another chart through the north end of the field, showing essentially the same data and same comparison in a different area of the field. In this case it shows the leases will recover from 55, the lowest, and it happened that that was also a Humble lease, and different leases will recover varying amounts of oil up until this particular lease, the Canadian Production Company-Christian, it will get 706 per cent.

Mr. Baker: I would like to introduce that as Humble's Exhibit No. 21.

(Thereupon, the chart referred to above was received in evidence and marked as Plaintiff Humble's Exhibit No. 21.)

A. This is another example. I believe this is also up in that general area, a little more to the east than the others. It shows examples ranging from 89.8 per cent, the lowest, the Gulf lease, which will get only 89.8 per cent of the aver-

age, and a lease over here which will get 2670 per cent of the average.

Q. Which lease is that?

A. That is the Francis Oil Company lease.

Mr. Baker: I would like to introduce that as Humble's Exhibit No. 22.

(Thereupon, the chart referred to above was received in evidence and marked as Plaintiff Humble's Exhibit No. 22.)

[fol. 235] Q. Explain that, Mr. Moore.

A. This is another one. This is through the Kilgore area, which shows essentially the same data, the lowest one being the Humble Oil & Refining Company Peterson lease, which will get 8.35 per cent, and the highest being the Hamilton Smith Culp, which will get 4910 per cent.

Mr. Baker: I would like to introduce that as Humble's Exhibit No. 23.

(Thereupon, the chart referred to above was received in evidence and marked as Plainti.. Humble's Exhibit No. 23.)

Judge Sibley: How large is that lease?

A. Five wells on .52 of an acre.

Judge Allred: How large is the Humble lease that you gave us?

A. Eight wells on 50 acres.

Judge Allred: Doesn't it all come to this,—since three-fourths of the top allowable is on a per well basis and only one-fourth on these other factors, that every time you get a lease five times as densely drilled as some others, it will shoot way up?

Mr. Baker: These are the same kind of charts. There are two more of them, and then we will be through with this.

Mr. Hart: We renew our objection to all this. We will admit that you can find extreme examples of dense drilling on the Humble tract, as well as anybody else's. They did not pick out examples where they were favored.

Judge Sibley: I think it is self-evident how the thing will work.

[fol. 236] Mr. Hart: It is just cluttering up the record.

Judge Sibley: Yes, sir; but I think he is entitled to prove the consequences; but I do think they are pretty evident without the proof.

Mr. Baker: I want to rush along.

Q. Mr. Moore, will you introduce the next two, and state whether they reveal the same conditions, except more so?

A. Yes, sir.

Mr. Baker: We will introduce these two exhibits next.

(Thereupon, the charts above referred to were received in evidence and marked as Plaintiff Humble's Exhibits Nos. 24 and 25, respectively.)

Q. Whose leases in those exhibits show the greatest comparative recovery?

A. In this one it is the Steadman Thrasher Birdsong lease; and this one, it has several leases of F. W. Fischer.

Q. That is the Mr. Fischer who is one of the plaintiffs in these cases?

A. I believe that is right, yes, sir.

Q. Those will be Humble's Exhibits Nos. 24 and 25?

A. Yes, sir.

Q. Now, Mr. Moore, will you state what there is in this order, in your opinion, that causes all these disparities that you have described here.

A. The fact that three-fourths of the allowable is distributed on a per well basis.

Q. What factors in the formula give way to sand thickness, acreage, and position on the structure?

[fol. 237] A. One-fourth of the allowable is allocated on those factors.

Q. One-fourth of the allowable is allocated on those factors?

A. Yes, sir.

Q. Now, this per well allowable of 20 barrels per day does not give any weight at all to those factors, does it?

A. No, sir.

Q. What is the effect of the 20 barrel minimum on production of wells on the west side, as compared with the fairway and as compared with the east side?

A. It permits the west side and the east side to produce at a much greater rate, in proportion to the reserves, than the fairway.

Q. Which side of this field is going to produce the longest under efficient operation?

A. The east side.

Q. Will it produce longer than the fairway under efficient operation?

A. Yes, sir.

Q. Will you state whether or not in your opinion under this order the leases in the Fairway which are drilled to approximately the average density can ever recover the equivalent of the reserves under it?

A. I don't believe they will.

Q. Why is that?

A. Well, for two reasons: one of them is that currently the Fairway receives a comparatively lower allowable in proportion to its reserves; the other, that there may be some appreciable drainage from the Fairway, to the east side.

[fol. 238] Q. To what average density are the Humble's leases in the east half of the field drilled?

A. On the east half of the field—that is, east of the water level, of the intersection of the water level with the bottom of the Woodbine they are drilled to—let's see, I believe I have lost a note I had on that, but it is approximately 4.8.

Q. I am talking about the Humble's leases now.

A. Oh, the Humble's leases are drilled to 6.18 acres per well.

Q. That is on the average?

A. Yes, sir.

Q. Now, to what average density are the leases of other operators of the east half of the field drilled?

A. 4.66 acres per well.

Q. Now, what effect does this order have on the Humble's east side leases as compared with other east side leases similarly situated?

A. Well, it means that Humble will only be allowed to produce about 75 per cent as much oil in comparison to its reserves as other east side leases will.

Q. And as compared to——

A. That is, Humble's leases on the east side will only get about 75 per cent as much proportion as other leases on the east side.

Q. Well, which side of the field under this order is the most heavily favored?

A. The east side.

Q. Why is that?

[fol. 239] A. It is a natural result of the effect of the operation of the water drive in that field.

Q. Well, does the 20 barrel minimum have anything to do with it?

A. Yes, it does because in addition to the natural advantage that the east side has by virtue of having a longer producing life, why, it also gets a current allowable that is greater, in proportion to its reserves, than the average for the field, due to the 20 barrel minimum.

Q. In your opinion, can uncompensated drainage from Humble's leases ever be avoided on the average under the existing order or any order similar to it?

A. No, sir.

Judge Sibley: Unless you drill more wells?

A. Unless you drill more wells and unless at the same time nobody else drilled any more wells, and we would have to drill down below the average density of the field, and nobody else would drill any more wells.

Q. The important thing—isn't it a fact that the important thing in density is not density per surface acres, but density per acre-feet?

Mr. Hart: If the Court please, we object to his leading his own witness. I think Mr. Moore is a willing witness and I haven't objected so far, but when he puts it——

Judge Sibley: Of course, reserve depends on both facts.

Mr. Hart: Yes, sir.

Q. Have you computed what per cent of the Humble's allowable—what fair allowable the Humble would receive [fol. 240] under the formula, if there were no per well minimum?

A. Yes, sir.

Q. What percentage would they receive?

A. 14.6 per cent.

Q. What relation does that bear to its reserves?

A. That is very close to its reserves.

Q. Well, now is that just an accident or why is it that it happens that way, that if the formula were applied to all of the production rather than to just a fourth of it, that the Humble's allowable would almost — the same as its reserves?

A. Well, that formula used by the Railroad Commission does distribute the oil substantially on the basis of the reserves, with certain modifying factors which allow the west side to produce a little bit faster than the east side and because——

Q. Why so?

A. I don't know why they put that in there.

Q. No, I mean what factors allow the west side to produce a little faster than the east side?

A. The factors of pressure and potential, and the fact that they use original acre-feet of sand rather than current acre-feet of sand.

Q. All right. Proceed.

A. Well, now, our leases are so widely distributed in the field that we have west side leases and middle leases and also east side leases, that the effect of these modifying factors about cancels out, and, therefore, we get under the formula part of the order, the allowable approximately in [fol. 241] proportion to the reserves.

Q. Would most of the field or not experience the same result if the Railroad Commission were to see fit to apply the formula to all of the production rather than to a part of it?

A. Yes, sir.

Q. Well, how about the west side leases?

A. The west side leases would be allowed to produce currently at a higher rate than leases of the same reserve on the east side, but at the same time the west side leases would have a shorter life, so that these factors in the order which tend to give a temporary advantage to the west side would also tend to make the ultimate, as well as the current allowable, come out in the approximate proportion of the reserves.

Q. Well, do you think that the west leases really would recover their reserves on account of the time factor or not?

A. I don't believe that they ever would get quite their full reserve.

Q. Is there any way that the Commission—of course, the Court hasn't got to write an order for the Commission, but in order to determine whether a reasonable order could be entered I am asking this question: is there any way that these same factors could possibly be applied by the Commission and overcome any possible disadvantage to the west side leases?

A. I don't believe—that is, I believe that under any practical order which provides for efficient operation of the [fol. 242] field, the west side of the field will almost suffer some drainage toward the east side.

Q. Mr. Moore, I think I want to ask you about one more question, a number of wells have been abandoned on the west side of the field and on the extreme east side, have they not?

A. Yes, sir.

Q. Do you or not consider that the abandonment of these wells has caused or would cause waste?

A. I don't believe it has brought about any waste.

Q. Well, why do you say that?

A. On the east side the area surrounding those wells has been affected by drainage not only from the wells in its immediate vicinity but also from all the other wells to the east of that, and the field has just produced enough oil so that the water has advanced to such points that substantially all of the recoverable oil has been recovered from certain areas over on the east side of the field.

Q. The east side or the west side?

A. I mean on the west side of the field; and that was brought about not by the particular well which had been abandoned, but by drainage from all the wells in the field.

Q. Well, if there are other wells in the vicinity, state whether or not in your opinion those other wells ought to be able to produce any oil that may remain and thereby avoid waste?

A. Well, I don't believe there is any oil that remains to be drained—any recoverable oil remaining to be drained but if there is any, why, I believe it will be recovered by other wells.

[fol. 243] Q. Well, suppose there are other producing wells in the vicinity of the well that has gone dead; now, would those other wells, in your opinion or not, produce the oil?

A. Well, the oil would be recovered from some wells; I can't say exactly which particular wells will get it, but it will be recovered.

Q. Is that because of the maintenance of pressure and the flushing effect of water?

A. Yes, sir.

Mr. Baker: I believe that is all.

Mr. Fischer: I would like to ask the witness some questions, if Your Honor please.

Cross-examination.

Questions by Mr. Fischer:

Q. The Humble offered in evidence yesterday the proration schedule for February, and I will refer to it, as to the allowable allowed my wells. Now, I want to read from the Railroad Commission's pro-ration schedule for the East Texas Field dated September 1, 1939, which shows the producing capacity of all the wells in the field, and it shows my wells as follows: On the Eaton consolidated lease, which has seven wells, from 800 to 810 barrels per hour; on the Eaton B, which has 23 wells, from 750 to 805 barrels per hour; on the McElroy lease, which has three wells, from 705 to 710 barrels per hour; on the Wilson A lease, which has 10 wells, from 805 to 810 barrels per hour; on the Wilson B lease, which has five wells—four wells on that,—from 810 to 820 barrels per hour; and on the Wooley lease, with one well, 810 barrels per hour. Since this schedule was [fol. 244] made up, I drilled one other well on the Oddfellows lease, which also has a potential of 810 barrels per hour, making a total of 49 wells. Now, Mr. Moore, I would like to ask you a question or two about my case, and then I want to ask you a question or two about what you have been swearing to here. A pumping well isn't as good a well as a flowing well, is it?

A. Usually it is not.

Q. Well, you know that pumping wells in East Texas are not, don't you?

A. In general, they are not.

Q. They are not as good. You know the class of wells that are classified by the Railroad Commission as marginal wells in East Texas, don't you?

A. Yes, sir.

Q. Those are the wells that will not pump over 20 barrels a day?

A. Yes, sir.

Q. All right. They are not as good as my wells, are they?

A. No, sir.

Q. Now, since the Commission restricts me in the production of my wells to 17 days a month and permits those

marginal wells to operate 30 days a month, what is the effect?

A. The effect of it is that on a per well basis you wouldn't get as much oil as a marginal well which is capable of producing, say, 9 barrels a day.

Q. All right. They would take my oil, too, wouldn't they?

A. No, sir, I don't believe they would.

Q. Well, if I am shut down and the well is producing—permitted to produce and I am restricted, wouldn't they [fol. 245] get my oil?

A. Mr. Fischer, I can't quite understand what you mean by this term "my oil".

Q. Well, under my lease. You are talking about oil under the Humble's leases. Wouldn't they get some of the oil?

A. Which wells, the marginal wells?

Q. Yes, if they are permitted to remain open and pump and the 23 wells are restricted in their production, wouldn't the poor lease eventually take the oil away from the better lease?

A. There might be a small amount of oil that was taken under that sort of circumstances, but it would be less than one per cent of the production of the field.

Q. All right. Well, if it continued indefinitely—if the better lease were shut down and the poor ones permitted to pump, wouldn't the poor ones eventually get all of the oil of the better ones?

A. Yes, sir.

Q. All right. Now, you were talking about how much damage you are going to sustain if you don't get this order set up and get allowed 14.3 per cent of the pro-ration of the field. As I understood you yesterday, you said you would lose between forty-five and ninety million barrels eventually. Is that right?

A. Yes, sir.

Q. There is a variable there of 100 per cent in your estimation, isn't there, forty-five to ninety million barrels?

A. I can't make those figures exactly; that is the reason I put the spread in there.

[fol. 246] Q. Well, that is your estimate, isn't it?

A. Yes, sir.

Q. Yes, sir. Now, if your engineer, in estimating that, you have got 14.3 per cent of the acre-feet of sand in the pool and consequently 14.3 per cent of all the oil in the pool, if your engineer might slip like you are slipping here,

and have the variable of 100 per cent, in his estimation, you might only have 7 per cent of the pool instead of 14.3 per cent, mightn't you?

A. The estimates that you are talking about are not subject to this 100 per cent area.

Q. You can't estimate what you are going to lose with the same degree of accuracy as you can what is 3600 feet under the ground down there, can you?

A. Because, Mr. Fischer, it is a much easier thing to estimate of reserves as of today in comparison with the reserves of the field as of today than to project into the future for 20 or 30 years under the operation of some particular order, and that is the reason you can make the estimate of our percentage of reserves far more accurately than you can make the estimate of what our estimate recovery would be under the hypothetical set of conditions projected into the future.

Q. Yes, sir. Well, any way you and Mr. Sorenson both admit that there is at least a ten per cent chance of mistake in your estimation of what acre-feet you have got and what oil you have got, don't you?

A. I believe that we said that in making up any one of these isopach maps that there might be as much as ten per cent error. Now, this is one the total number of acre-feet. Now, then, relatively, comparing the ratio of one property [fol. 247] with another or one property with the entire field, that error is no longer as great as ten per cent, but is susceptible to a more accurate estimation than the number of acre-feet in the entire field.

Q. Well, you had an error of ten per cent in the entire field?

A. Yes, sir.

Q. Then if you ought to compare your Humble's acres with the entire field and you would have a ten per cent error there, wouldn't you?

A. No, sir.

Q. You wouldn't?

A. The reason is this, that the yardstick by which you measure the acre-feet in the entire field might be a little long or a little short, but you measure the reserve of a particular well you are interested in there with the same yardstick, and for that reason on a percentage basis you can get the relative reserves far more accurately than you could estimate the absolute reserves.

Q. All right. If there is a variable of ten per cent in your estimation, and there is five billion barrels of oil in the pool, there is five million barrels of oil you are going to take off of one man and give it to another by that mistake, aren't you?

A. No, sir, you wouldn't take it off of that man.

Q. Well, there was a mistake of ten per cent, and ten per cent of five billion barrels is five million barrels, isn't it?

A. Yes, sir.

[fol. 248] Q. Well, if it was taken off of me and given to the Humble I would lose that, wouldn't I, by that mistake?

A. Mr. Fischer, no physical measurements can be made with absolute accuracy.

Q. Yes.

A. And I believe that—I believe that it would be impossible for the Railroad Commission ever to write an order which would give down to the exact last barrel the right to produce the reserves underlying a tract.

Q. Yes.

A. But they can come within very close to it, and the order now is far outside the range of engineering approximations that we have to make.

Q. All right. Now, Mr. Moore, the effect of this order is, and what you are contending for is the partition—is the partition of the oil you have in place in the pool, isn't it?

A. Yes, sir.

Q. That is what you want, a partition of it?

A. Well, any order is that.

Q. Yes, sir. All right. You want the Commission to say that the Humble has got 14.3 per cent of the oil in place in this pool—that is, what you want them to say, don't you?

A. Well, I don't want them to say anything, Mr. Fischer. I am only trying to explain what will happen if they do say certain things.

Q. Well, I am asking you if you are complaining because they haven't said that?

A. I am not complaining, no, sir; I am trying to explain what will happen under these various orders.

[fol. 249] Q. Well, that is the effect of the order any way, is a partition of the oil in that pool, isn't it, among the various owners?

A. The effect of any order is that, yes, sir.

Q. All right. Now, you heard Mr. Sorenson's testimony yesterday, didn't you?

A. Yes, sir.

Q. He said that the Humble owned 6900 acres of land——

Judge Sibley: I think we had better leave him out now, and let this witness say what he thinks he knows.

Mr. Fischer: All right.

Q. Well, you know that the Humble has got 6900 acres of land that lies east of the water line, don't you?

A. I believe that is right; I think that is the figure.

Q. All right, and that 53 million barrels of oil has been produced from it?

A. Yes, sir.

Q. You still have in place the same amount of oil you started with nine years ago. All right. Now, if the oil is partitioned off by the Commission to the various owners and that 6500 acres with its underlying oil is partitioned to the Humble but it is never depleted, as fast as you can produce from it, why, it is replaced from the west side by somebody's else's oil,— what happens to your parcel there that has been partitioned off to you?

A. Well, we don't get as much oil as others get that are similarly located on the structure in that part of the field.

Q. How come you don't?

[fol. 250] A. Because of the drive of the water.

Q. Well, and because you haven't drilled as many wells as the other folks, too?

A. Yes, sir.

Q. If you drilled as many wells as I did, you would get the same proportion as I did per acre-feet, wouldn't you?

A. I believe, Mr. Fischer, if we drilled as many wells as you did we would have an allowable of about a million barrels a day.

Q. I didn't ask you that. I asked you if you wouldn't get the same proportion that I get if you drilled the same number of wells that I did.

A. Yes, sir; our allowable would be about a million barrels a day.

Q. Yes, sir. Will you answer the question whether or not it would be in the same proportion?

A. I don't believe the field could produce that at the rate required.

Q. If you don't want to answer that, all right. It costs $10,000 today to drill a well, doesn't it?

A. Approximately, yes, sir.

Q. Now, what you want and what you are contending is that the formula be applied to each well without any base minimum, aren't you?

A. No, sir, I don't believe that is——

Q. Well, you say that would be fair, don't you, that the Commission ought not to start off with a base minimum of 20 barrels——

A. Yes, sir.

[fol. 251] Q. But it ought to start with the application of the formula right in the ground?

A. I haven't made any recommendations of that kind, Mr. Fischer.

Q. Well, I understood that that was your contention here. Do you think that would be fair?

A. I don't believe that is our contention.

Q. It is not. Well, suppose then it was applied that way.

A. Yes, sir.

Q. There is thousands of wells in the field that were drilled on very small tracts because the people owned very small tracts, wasn't there?

A. Yes, sir.

Q. And they were drilled in pursuance of the orders of the Supreme Court of this State, weren't they?

A. I don't know about that.

Q. That each man had a right to drill one well upon his tract of land?

A. I am not familiar with those orders.

Q. All right. Let's see if you are familiar with this then. You know by the application of this principle to a tract of land 40 feet by 40 feet, he wouldn't get two barrels a day, would he?

A. He would get something like that, yes, sir.

Q. Yes, even where the sand is 90 feet deep, he would get about two barrels a day, wouldn't he?

A. I haven't figured it out exactly; that sounds approximately right.

Q. Yes. Now, then, if this order—if that had been the order of the Commission and that is the way it is applied [fol. 252] now, the man or the woman with a tract of land 40 feet by 40 feet couldn't possibly drill a well on it, could they?

A. I don't believe he would drill a well for two barrels a day, sir.

Q. Why, of course, he wouldn't; you know he wouldn't, Mr. Moore, so that man's property under his land would go to somebody else that had a large tract where he could drill and get a larger allowable, wouldn't it?

A. That situation has been handled otherwise in other fields, Mr. Fischer, so that the small tracts of this kind have been permitted to participate in the production.

Q. Yes, I know, but we are not talking about that now. We are talking about a situation that we have down in East Texas; that is what the Court is going to determine, and it wants your information about it—if that won't be true.

A. What wouldn't be true?

Q. If the well couldn't be drilled on the small tract, the oil under it would go to some other owner, wouldn't it—somebody else?

A. Not necessarily.

Q. Wouldn't it?

A. No, sir.

Q. Well, then, would that oil be lost and never be produced?

A. No, sir.

Q. Well, then, what would become of it if it wasn't lost and if it didn't go to anybody else—what would it do—just stay there?

A. Of course, I don't know what would happen, Mr. Fischer, but if he said that same thing has been—that same [fol. 253] situation has arisen in other fields——

Q. Yes, you are talking about pooling areas——

A. —and small tracts have arranged to participate in the production of the field and get their share of the reserves.

Q. Yes, but we don't have that situation in the East Texas Field. The wells were drilled without pooling arrangements. They were drilled on the proposition that each man was entitled to drill on his land?

A. It has not been necessary in the East Texas because those small tracts of 40 by 40 feet have been permitted under the Commission's order to recover just as much oil as the tracts of five acres or so.

Q. All right.

A. So a drilled pool would have been a great disadvantage to those tracts.

Q. Now, will you get back and answer my question if you please. If you don't want to answer it, say so and I won't ask it any more. I say that if a small tract of land wasn't

going to be—coming in that allowable so a well would be drilled on it, what would become of the oil under that tract—would it be wasted or go to the owner of the adjacent tract?

A. I believe it would go to a joint ownership.

Q. Go to a what?

A. To some sort of a joint ownership. I don't believe any of those conditions you mentioned would obtain.

Q. All right. Now, suppose the Legislature was right about this proposition and it sat down and found that a pumping well could not exist on less than 20 barrels a day if it was pumping below 3,000 feet, and that well is cut down to 2 barrels, as well as all these others that don't have a [fol. 254] potential of enough—acreage enough to give them 20 barrels, and it is cut down to 2 barrels, what will become now of the oil in place under those tracts?

A. I don't believe there is very much oil in place under a well which would only obtain an allowable of 2 barrels per day.

Q. Well, I didn't ask you how much was under it. I asked you what would become of it whether it is little or big, what would become of that oil in place if the well must be shut down because its allowable is only 2 barrels or insufficient to operate on.

A. Well, I don't know about those 2 barrels; it would be pretty close to the border line.

Q. Well, whatever it is if it is insufficient to operate that and it must be closed down, will you tell me what will become of that oil that is under the ground?

A. It would be recovered by other wells in the field.

Q. I see. It would be recovered by other folks?

A. Yes, sir.

Mr. Fischer: That is all, sir.

Cross-examination.

Questions by Mr. Moody:

Q. I would like to ask you a few questions, Mr. Moore. Are you acquainted with the location in the field of the Rowan-Nichols-Todd A lease?

A. Yes, sir.

Q. Have you made any calculations to determine what amount of oil of that in place under the lease at this time

[fol. 255] would be lost or that Rowan-Nichols wouldn't be able to produce during the life of the field, if the present plan of pro-ration is continued for the productive life of the field?

A. Well, Mr. Moody, I made a set of those calculations, but I didn't check the basic data on which they were made. That data was given verbally by Mr. Buck and I didn't verify it; but I made the calculations on the basis of this data that Mr. Buck furnished me.

Q. Can you state the acre-feet of sand that he gave you in that data?

Mr. Hart: If the Court please——

A. The thickness was 90 feet.

Mr. Hart: We object to this line of interrogation. Mr. Buck is present and anybody can make the mathematical calculation I suppose. I don't see the advantage of proving what the mathematical calculations were on a certain assumption.

Mr. Moody: I don't know, Your Honor, that anybody can make the calculations.

Judge Sibley: Well, Mr. Buck will be here and can be asked as a witness.

Mr. Moody: Yes, sir, Mr. Buck is here and we will undertake to get that from him.

Judge Sibley: All right, if you are going to undertake to prove the basic facts you can prove the mathematical result all right.

Mr. Moody: All right.

Q. What did your calculations show?

A. It showed somewhere between 800 and 900 thousand barrels would be drained from beneath that tract.

[fol. 256] Q. Well, you mean by that, if this order is continued in force during the productive life of the field?

Mr. Hart: If the Court please, we object to that question, because he hasn't stated what data he based that calculation on.

Judge Sibley: We can't tell whether Mr. Buck backs him or not.

Mr. Moody: Yes, sir, all right.

Q. What are the facts that you used in calculating this, Mr. Moore?

A. I used the allowable of the lease which was given me by Mr. Buck, and figured the 90 feet of sand which Mr. Buck gave me, the surface acreage, the number of wells in the lease—I have forgotten just exactly what those figures were now. I do remember the sand thickness, and those factors are then based upon some calculations I had based upon the effect of this order on the entire field. And I made the estimate of the ultimate recovery that would be obtained from those Rowan and Nichols leases.

Q. All right; in other words we are——

Mr. Hart: If the Court please, now, I wish to object to it because his statements are so indefinite we have no way to check the matter.

Judge Sibley: I think so too; I think the witness will have to get closer figures before he can undertake to give us his results. Perhaps Mr. Buck can give him his figures over again.

Mr. Moody: Very well, Your Honor.

Q. Mr. Moore, if the East Texas Field were allowed to [fol. 257] produce on open flow—that is, without any character of proration, what area of the field, if any, would have an advantage in production and produce the greater amount of oil?

A. In my opinion the center part of the field—that is, the Fairway, would.

Q. The Fairway?

A. Yes, sir.

Q. That is where the sand is the thickest?

A. Yes, sir.

Q. As this present order is enforced and applied in the field, if I understand correctly, the eastern and western edges of the field are allowed to produce more oil in proportion to the oil in place under those parts of the field, then is the gas with the center of the field?

A. Currently, yes, sir.

Q. All right. Well, this order just reserves what would be the situation, then, if the field were allowed to flow open without restriction, doesn't it?

A. Substantially, yes, sir.

Q. Now, during the life of the field, according to your calculations will there be any part of the field that will lose—assuming that this order is continued in force during the productive life of the field, is there any particular area of

the field that would, in your opinion, produce substantially less oil than the amount of oil in place now in that part of the field?

A. Yes, sir, I don't believe the Fairway under the present order will produce anything like the amount of oil in place.

[fol. 258] Q. All right, what about the east side of the field?

A. The east side, I believe, will produce considerably more than its oil in place.

Q. All right. Now, with respect to the present order as it is enforced and applied in the field, are operators in the field allowed to produce in proportion to the amount of oil that have in place under their tracts?

A. No, sir.

Q. Does that order as it is now enforced and applied give recognition to the advantage that one man may have on the structure, as compared with another man—are those matters held equal, or somebody on the structure may have a better position than someone else?

A. There is a very slight advantage to the better leases on the structure under the present order; they have some advantage, but not in proportion to the structural advantage.

Mr. Hart: If the Court please, we wish to object to that because I don't know from the statement what he means by advantage or what he means by better leases.

Judge Sibley: He is talking about potentials and all that.

Mr. Hart: That is what I don't know. I can't tell if he means——

Judge Sibley: There is no use of his telling us because we all know it already from what has been told.

Mr. Hart: Well, my objection is that it is indefinite and I don't know what he is talking about.

Judge Sibley: Well, I know what he is talking about.

[fol. 259] Mr. Hart: We except.

Q. Mr. Moore, with respect to the method of drilling wells—additional wells, in your opinion, what area will one well in the East Texas Field effectively drain?

A. I think that 6,000 wells would have been sufficient to have recovered efficiently all of the oil in the field.

Q. 6,000 wells; that would be about a well to——

A. That would average out a well to 20 acres, approximately.

Q. All right. Take the Rowan-Nichols lease,—assuming that the Todd A lease—assuming there is 28 and a fraction acres in the lease and it has 7 wells on it and it is drilled to a density of one well to 4.3 acres,—in your opinion, is that a sufficient number of wells to produce all of the recoverable oil for that tract of land if under the order of the Railroad Commission the tracts were allowed to produce along with other properties in the manner provided by the Statute, that it shall be—the allocation of the allowable shall be fair as between wells and leases? Do you get that?

A. If that fair as between leases means in proportion to reserves, why they have there a sufficient number of wells on their property if they were given an allowable in proportion to their reserves.

Q. Well, to make that a little clearer, you have—if you have 7 wells on that tract of land and the field produced open flow; would you think that 7 wells ought to be enough to produce all of the recoverable oil originally in place under the Rowan-Nichols property?

A. If the field were produced by open flow, I don't believe that that lease or this field would obtain as much oil [fol. 260] as it is going to produce, regardless of the number of wells in it.

Q. Well, I am not driving at whether it would get as much or more or less oil. I am talking about taking the field as it is right now and suppose that field were producing open flow, do you think that 7 wells on that lease would be capable of recovering all the oil?

A. I don't believe any number of wells would be capable of producing all the oil under open flow. You could drill 700 wells and still not get it under open flow because your operation of the field would be inefficient.

Q. In other words, you mean by that under open flow you wouldn't get as much oil as you would get under regulated operation of the field, is that what you mean?

A. Yes, sir.

Q. All right. Well, if the Railroad Commission's order —I will ask my question a little differently. If the Railroad Commission's order allowed Rowan & Nichols, along with others, to produce in equal proportions or as to the amount of oil they had, is it your opinion that 7 wells on the 28

acres would be sufficient to produce the recoverable oil under the 28 acre tract?

A. Yes, sir.

Q. I believe you say it costs about $10,000 to drill a well?

A. Yes, sir.

Q. Now, with respect to this matter of drilling wells on tracts, 40 feet by 40 feet that Mr. Fischer asked you about——

A. Yes, sir.

[fol. 261] Q. Do you know of any areas in that field at this time that have been of that type—that have not been drilled up, are you acquainted with any place——

A. Yes, sir, I know several areas in the field where they have drilled on tracts approximately that size.

Q. Well, I am not talking about that have been drilled. I am talking about that have not been drilled.

A. Oh, no, sir, I don't.

Q. As far as you know this field is all drilled up?

A. Yes, sir.

Q. Now, then, you said that under this order that on the east side of the field there would be leases over there that would get substantially more than the amount of recoverable oil in place, originally in place, under those leases. Is that what you stated a while ago?

A. Yes, sir.

Q. Well, starting from now, the amount that is now under the leases under the leases there on the east, if this order if continued enforced from now during the balance of the productive life of the field, is it your opinion that the leases on the east will secure substantially more than the amount of recoverable oil now in place under those leases?

A. Yes, sir.

Q. Where is that oil going to come from?

A. It is going to come from the Fairway and the west side.

Q. Well, will leases like the Rowan & Nichols lease, which is in the Fairway—you so understand it to be, do you not?

A. Yes, sir.

Q. Well, leases like the Rowan & Nichols lease contribute [fol. 262] to this larger recovery of these east side leases, and by larger recovery I mean a recovery over and above the oil they have in place beneath them?

A. Yes, sir.

Q. Now, from your studies of this field what is your opinion with respect to whether or not this particular order that the Railroad Commission is now enforcing in that field is necessary to prevent waste of oil and gas in the field?

A. With respect to the top allowable, I believe it is; with respect to the rest of the order, I don't believe it is.

Q. Well, I have reference not to the top allowable because I understand there isn't any particular attack being made here on the top allowable, but I am talking about the method of allocating between wells in the field—the field allowable, is that particular method necessary in order to prevent waste?

A. It is.

Q. Now, with respect to this business of a minimum allowable of 20 barrels per well throughout the field, do you think that it is necessary to enforce that 20 barrel minimum allowable in order to prevent waste?

A. No, sir.

Q. In your opinion, is it necessary to give every well in the East Texas Field that will make it a minimum of 20 barrels allowable in order to keep that well producing oil and from the standpoint of waste or from the standpoint of the economics of the thing of the one well?

A. No, sir, it is not.

Q. Can a well be produced in that field on five barrels production per day?

[fol. 263] A. I believe it can, yes, sir.

Q. Now, Mr. Moore, let me ask you this question; is it or not true that as long as you have a flat per well allowable of as much as 20 barrels per well clean over the field taking up 70 or 75 per cent of the daily field allowable, that the enforcement of that order in the field, in view of the way it has been drilled, the tremendous number of small tracts that have wells on them, will such an order and its application to that field result in unequaled takings from the properties and by unequaled takings from the properties I mean out of proportion to the reserves under them, th-oughout the life of the field, and result in taking from one man to give to another.

A. Yes, sir, I believe it will.

Q. In so far as the order is a flat 20 barrel per well order, and that is leaving off the complement that is added

to the 20 barrel, so far as the order is enforced and applied as a flat 20 barrel per well order, does it have the effect to leave the poorest properties in the field to the level of the best, and you reduce the best properties in the field to the level of the worst?

Mr. Hart: We object to that, if the Court please, as being argumentative.

A. It has——

Judge Sibley: Well, it is argumentative and also self-evident.

Mr. Moody: All right, sir.

Q. Now, the next question I want to ask is does the amount that is added to the 20 barrel by the application [fol. 264] of the formula take away or from these properties back some of the disadvantage that one suffers and the advantage that the other suffers (enjoys) through the 20 barrel minimum. Does the application of the formula—does that then bring those properties back, or any of them, that you know of, to a position where they are producing ratably and in proportion to what they have, one with the other?

A. Well, you might find a few rare examples of specific properties that were brought back that way, but in general it would not.

Mr. Moody: All right, that is all.

Cross-examination.

Questions by Mr. Hart:

Q. Now, Mr. Moore, Governor Moody just asked you whether or not a well in the East Texas Field could be produced on a five barrels a day. Now, what kind of a well were you assuming there?

A. I was assuming the average pumping well in the field.

Judge Sibley: Before you proceed with the cross examination, we will take a recess for five minutes.

(Thereupon Court was recessed at 10:30 A. M. until 10:45 A. M., at which time the following proceedings were had.)

[fol. 265] T. V. Moore, having resumed the stand, testified further as follows:

Cross-examination.

Questions by Mr. Hart:

Q. Mr. Moore, I believe you said that your figure of five barrels applied to an average pumping well in the field; is that correct?

A. Yes, sir. Mr. Hart, I would like to explain that I am not responsible for production costs and don't work with it. That figure was based upon the fact that there are a number of pumping wells in the field that are producing five barrels a day, and if you want more details, and the exact figures on that well cost, and cost of operation of wells, I would prefer you would get it from somebody that can speak with more authority than I can.

Q. You have an expert who will probably testify that, an expert on the cost of production and so on?

A. Mr. Baker can probably tell you. I think we have.

Q. All right, sir. I won't go into that. I want to ask you this. Are there pumping wells on the east side, as well as on the west side?

A. I believe so. Yes, sir.

Q. And the cost of operating a well on the east side is considerably less than the cost of operating a pumping well on the west side, where a large percentage of water is being produced?

A. I believe that is right.

Q. In fact, aren't you familiar with the fact, Mr. Moore, that the Humble Oil & Refining Company itself has aban-[fol. 266] doned wells on the west side when they were producing, say as much as seven or eight barrels a day on the west side?

A. I am not familiar with those figures exactly, at what point they were abandoned.

Q. You don't recall that the Humble Oil & Refining Company Laird well was abandoned in August, 1939, when it had a production of 7.74 barrels a day?

A. No, I don't recall those figures.

Q. You don't know about that. All right, in answer to Governor Moody's question, I believe you stated, Mr. Moore, that an open flow production of the field would be an inefficient method of producing the field?

A. Yes, sir, that is my opinion.

Q. And that under a method of proration whereby the company allowable is cut down to approximately the present figure, there would be a greater ultimate production of oil from the field than there would be under open flow operation; isn't that correct?

A. Yes, sir.

Q. Could you give us an idea of approximately what percentage more will be produced from the field as a whole under this method of operation, as contrasted with an open flow method of operation?

A. I believe that under proper control of the field that you will recover 25 to 50% more oil than you would otherwise.

Q. All right, sir. Well, isn't it a fact, Mr. Moore, that not in speaking of the percentage, but of the absolute amount of oil produced, that under the present method of proration, the fairway will produce a larger amount of oil than you would under open flow conditions?

[fol. 267] A. That is possible.

Q. It is really probable, in your estimation. If you say the whole field will produce about 50% more, it is probable the fairway will produce more under the present method than it would under the open flow condition.

A. No, I wouldn't say it is probable. My opinion is that throughout the field under open flow, with the possible exceptions on the extreme east and west sides, but on the average, I believe you would get about half the oil in place from each property under open flow conditions, and I think that is about what the fairway is going to get now, approximately.

Q. I believe you said a while ago that you thought possibly the fairway might produce more under this order than it would under open flow conditions?

A. It is probable——

Judge Sibley: Just for my information, what will become of that other 25 or 50% under open flow?

A. Your Honor, it would be less unrecoverable in the sands.

Judge Sibley: There is no pressure to force it to the well.

A. There is no pressure to force it to the well.

By Mr. Hart:

Q. Now, Mr. Moore, in these examples that you gave, you had examples of where the Humble Oil & Refining Company was comparatively less densely drilled than these other leases you spoke of. The Humble Oil & Refining Company has leases in the field that are more densely drilled than the average of the field?

A. Yes.

[fol. 268] Q. In fact, it has some leases like the Neal Turner lease, drilled down to 1 well to 1 acre, approximately that.

A. I think there are probably examples where we have very dense drilling.

Q. And in the cases where the Humble has dense drilling it would have the same advantage on their leases that are densely drilled as these other examples you picked out owned by other people?

A. Yes, sir. There are quite a number of our leases where we have an advantage.

Q. And the only way of determining whether or not you are going to be hurt or benefitted on the whole is by taking an average, isn't that true, looking at the whole picture, and not just those specific examples?

A. You can do it either way, Mr. Hart, looking at it as a whole picture, or taking it as specific examples, and it comes out the same.

Q. There are examples, are there not, where the Humble is benefited over other leases that you can pick in the field?

A. Yes, sir.

Q. The Humble is drilled, I believe you say, to one well, an average of one well to 5.8 acres. Is that correct?

A. Yes, sir.

Q. You gave some figures here about the density of drilling on the Humble tracts east of the water level, I believe you stated. Is that east of the limits of water encroachment?

A. It is east of the present area of the field which is underlain by water. In other words, on that exhibit there showing the water encroachment it is east of that line drawn through the approximate center showing the limits of the [fol. 269] field now underlain by water.

Q. Do you know what the Humble's average density is west of that line?

A. I have those figures available. It is considerably—our properties to the west of there are considerably more densely drilled than they are to the east of there.

Q. Considerably more densely drilled?

A. Yes, sir, not more than the average, but more densely drilled than our east edge properties.

Q. Do you have that exact figure?

A. I am sure I can get it very conveniently. May I look at my notes?

Q. Certainly, and I would like also to get, if you have it, the average densities of the others west of the water line.

A. The average density on Humble properties west of the water line is 5.41 acres to the well, as compared to 5.27 for the others.

Q. I believe that you stated if Humble drilled down to a density of the average of the field, assuming the others didn't drill any more wells, the Humble under the present order would get substantially the equivalent of what you estimate to be its reserves; is that correct?

A. Let me say what I meant by the average density. It is the average density in proportion to our reserves, which would mean that our fairway leases would be drilled on a much greater density per acre than the average for the field, but the average density per acre-foot would have to be the same as for the others in the field.

Q. Do you mean that under the operation of the present [fol. 270] order it would be necessary to drill the leases in the center of the field to a greater density than the leases on the edges of the field in order that they might recover their oil, recoverable oil in place, over the productive life of the field? I am not speaking currently, but over the productive life of the field.

A. Yes, sir, that east edge would still have some advantage.

Q. All right, sir. By the way, you spoke a while ago of structural advantage. Which part of the field has the structural advantage? What do you mean by that?

A. When I used those figures, I used the term structural advantage to mean the thickest part of the sand. Which part of the field actually has an advantage over another part depends on the order that you operate under, but I used it to mean the thickest part of the sand.

Q. All right, sir. And when you spoke of leases having structural advantage in answer to Governor Moody's ques-

tions, you meant the leases having the thickest sands, not necessarily the leases on the east that will produce longer than the leases on the west?

A. I don't recall exactly that question. I believe that is the sense I used it in.

Q. The leases on the east side of the field have a natural structural advantage by reason of the fact they will produce longer than the leases in the middle or on the west side, don't they?

A. That is correct.

Q. That is an advantage that would exist, would it not, under any practical method of proration which would permit all of the field to produce?

[fol. 271] A. I believe that is correct, yes, sir.

Q. There is no practical method of proration that the Commission would adopt that would completely eliminate that advantage that the east side naturally has, isn't that correct?

A. I don't believe they could adopt it.

Q. Mr. Moore, you made certain calculations up there about what the Humble Oil & Refining Co. had produced, and what it would have produced had it been allowed to produce 14.3% of the oil produced to date.

A. Yes, sir.

Q. That is substantially what that chart over there—you, do you remember the number of that exhibit? I believe it is Plaintiff's Exhibit No. 9. That is substantially what that chart shows, isn't it, the difference between the amount of oil you have produced, and the amount of oil you would have produced if you had been allowed to produce 14.3% of the oil produced from the whole field to date?

A. Yes, sir.

Q. You don't mean to say, do you, Mr. Moore, that the figure of sixty-four million barrels represents the difference between the amount of oil that the Humble Oil & Refining Company has produced, and the extent of the depletion of those leases to date, the actual physical depletion of those leases?

A. I don't know that I understand your question. Do you mean that that sixty-four million barrels is the difference between the amount of oil which we have actually recovered and the extent to which our leases have been drained? That is, somebody has produced a total of sixty-

[fol. 272] four million barrels, plus 130,000,000, or about 200,000,000 barrels from underneath our leases, and our leases have been depleted approximately to that extent.

Q. I don't intend to mean anything, Mr. Moore. I am just asking you a question there. What has been the production from your leases to date? Let's get at it this way.

A. Approximately 130,000,000 barrels.

Q. What has been the depletion in acre-feet of your leases up to the present time?

A. I haven't got that figure in acre-feet.

Q. Didn't you give a figure in acre-feet yesterday of 119,770 acre-feet of depletion on the Humble leases up to the present time?

A. Let me see what that figure was. See if I have got a note on that—yes, sir, that is—no, wait a minute. That wasn't the depletion of our leases.

Q. What was that?

A. That was the approximate number of acre-feet, assuming a recovery of 1,100 barrels per acre foot, equivalent to the amount of oil that we had produced.

Q. Do you have any figure there, or do you have any estimate, can you give me any estimate of the actual number of acre-feet of sand that have been depleted under the Humble leases to date?

Judge Sibley: Do you mean, invaded by water?

Mr. Hart: Yes, sir.

A. I can give that to you approximately, Mr. Hart. I believe yesterday I quoted the figure of some 124,000,000 barrels—124,000,000 acre-feet at 1,100 barrels per acre foot, which would have been flooded out to account for the past production——

[fol. 273] Q. Just a minute please, sir. How did you get that 124,000,000 acre-feet? You just took your estimate of the amount of oil that had been produced to date, and assumed that 1,100 barrels per acre foot was produced, and divided it into that? Was that all?

A. Yes, sir, that is correct.

Q. If there hasn't been actually 1,100 barrels per acre foot produced, that figure would be off to the extent of the variation between the figure of 1,100 barrels per acre foot and the actual production per acre foot to date; isn't that correct?

A. Yes, sir.

Q. Instead of just making a mathematical calculation on an assumption like that, let me ask you if the Humble has actually by investigations in the field of loss, and however else you might have determined it, has it actually tried to determine the actual number of acre-feet which have been depleted in the field up to date?

A. Yes, sir, I believe they have. However, I think that this is a more accurate method of doing it.

Q. Will you give me that figure?

A. I haven't got it.

Q. Don't you think it is important that we should know the actual number of acre-feet depleted in the field, and in the Humble leases so that we can know whether there has been any depletion to it, and if so, how much; what percentage of the acre-feet left the Humble Oil & Refining Company has.

[fol. 274] A. It may be important. I think that in determining the total number of acre-feet flooded, that this is the more accurate of the two methods of making that computation.

Q. That computation is simply, first of all, that you make, is simply, first of all, an estimate of the amount of oil produced, and an assumption of how much oil per acre foot has been produced, and you just divide them out. There is no attempt to check on the actual physical facts in the field, is there?

A. No, sir, that 1,100 barrels per acre foot is not an assumption. It is a very reliable estimate of—in my opinion, of what an acre foot of sand will yield under the conditions the East Texas Field is being operated under.

Mr. Baker: Mr. Hart, if you want those figures, they are here available, and I can turn them over to the witness.

Mr. Hart: Do you have a copy?

Mr. Baker: Yes, I can let you have a copy.

(Thereupon counsel handed said figures to counsel and the witness.)

By Mr. Hart:

Q. Now, Moore, you have changed your opinion, have you not, about the recovery per acre foot in the East Texas Field since last August when the Commission had a hearing

on the Humble application? Wasn't your opinion at that time that the recovery per acre foot in the East Texas Field would probably be 1,000 barrels, instead of 1,100 barrels?

A. No, not past recovery. I believe, Mr. Hart, that figure of 1,000 barrels per acre foot that I quoted was an [fol. 275] average throughout the life of the field. I believe that the water drive has been more efficient in flooding the acre-feet, flooding the sand up to the present time, but throughout the life of the field it will not be so efficient, and so, that overall, the sand will not yield 1,100 barrels per acre foot, although it has done so up to the present time.

Q. Then your estimate of the recovery per acre foot up to the present time now is about 1,100 barrels per acre foot, is that correct?

A. Yes, sir.

Q. What is your estimate of what the recovery per acre foot will be in the future, from now on?

A. I think it will—I think it will probably average in the future somewhere between 900 and 1,000.

Q. And what, in your opinion, is the explanation of the difference between what you say has been recovered per acre foot in the past, and what will be recovered per acre foot in the future?

A. I believe that in the early life of the field, that the power of the water drive will be greater and it will wash the sands more effectively than it will after the water has had to move through some five miles or farther of sand that was once oil bearing.

Q. In your judgment, is there any difference in the amount of recoverable oil per acre foot in the west side of the field, say, from the east side of the field?

A. I think the total amount of oil in place in—let's don't take the extreme east, but in a little ways from the extreme east, and in a little ways from the extreme west, in order to [fol. 276] get away from this little margin where there is a little border line, whether it is an oil sand or not; the total amount of oil in place is about the same in both of those areas, but it will be possible to recover more oil from the extreme west edge leases than it will from the extreme east edge leases.

Q. Could you give us the difference between those two, approximately?

A. Yes, I think your east edge leases might not give as much as 900 barrels per acre foot, whereas, your west edge leases will give you approximately 1,100.

Q. That is from now on?

A. Yes, sir.

Q. Now, Mr. Moore, you were going to give us some figures there on the actual depletion of the Humble leases to date, and actual depletion of the field to date. What figures do you have there.

A. I have here some figures which show the number of acre feet from the entire field drained, are 910,720. Those others have been drained, have been depleted to the extent of 790,694. Humble has been drained to the extent of 120,026.

Q. All right, sir. Now, you take 1,100 barrels per acre foot that has been produced to date, and multiply that by the number of acre-feet that have been depleted from the Humble leases to date, and what would you get? How many barrels of recoverable oil per acre foot from that part of the Humble leases that have been depleted to date?

A. You would get approximately 120—130,000,000 barrels. However, I don't believe that is an accurate method [fol. 277] of making that computation because——

Q. Just a minute, please, sir. Let me ask you one thing at a time, and then you can go into an explanation. If you take what you say is an accurate expression, an accurate estimate, as well as you can reach it, of the amount of production of recoverable oil per acre foot so far, you would get approximately the same figure of the depletion from the Humble leases as the Humble has actually produced up to the present time, wouldn't you?

A. That is correct, but if you take this same set of figures and compare it to others, why, you find that in order for this same set of figures to match up by a similar calculation, you will find that other leases in the field have produced about 40% more per acre foot than Humble.

Q. All right, sir. But the Humble has just about produced what has been depleted from its leases, according to that calculation.

A. I don't think that calculation shows that, Mr. Hart.

Q. Well, the Humble has produced 131,000,000 barrels, hasn't it?

A. Yes, sir.

Q. And it has been depleted, according to that estimate—that is an estimate the Humble made, isn't it?

A. Yes, sir.

Q. It has been depleted 120,000 acre-feet, approximately?

A. Yes, sir.

Q. And your estimate of the recovery per acre foot is about 1,100 barrels?

A. Yes, sir.

[fol. 278] Q. Multiply that by 120, you get what Humble has produced to date?

A. Yes, sir.

Q. All right.

A. May I explain that?

Q. Go on, explain it.

A. These estimates of acre-foot figures, as I have said, are subject to some inherent errors.

Q. Is that true of any estimate of acre-feet?

A. Yes, sir.

Q. Well, then, you estimated all your acre-feet the same way, didn't you?

A. Yes, sir.

Q. Well, this estimate of 14.3 per cent you say you have left in the field would be subject to those same errors, wouldn't it?

A. Not the same errors. It is subject to errors which would be much smaller.

Q. You didn't calculate the figure on which you base your percentage of 14.3 per cent in the same way you calculated these figures?

A. Yes, sir.

Q. You did calculate them in the same way?

A. Yes, sir.

Q. All right.

A. Now, there probably was some oil obtained below the level which is generally accepted as the original table and from which both our map and the Commission's map were based on. Now, then, we are taking here these figures for the acre-feet of sand and we are subtracting two large [fol. 279] quantities, each one of which might be subject to some error. To give you an idea of the possible accuracy of these figures, why, let me quote here from this sheet the comparison between the Commission map and our

original map which we made up entirely independently and from different data and by different people. The Commission map showed 4,961,546 acre-feet and our original map showed 4,976,020 acre-feet.

Q. Originally?

A. Yes, sir.

Q. Excuse me just a moment. In the August hearing before the Railroad Commission the Humble estimate was 5,208,000 acre-feet, wasn't it?

A. Yes, sir.

Q. And you say your present estimate is how much?

A. 4,974,000.

Q. How far off were you there on those two estimates you made?

A. Well, we were off three parts in fifty, or about six per cent.

Q. That is between your August hearing before the Railroad Commission, and when was that figure that you have there?

A. It was computed between that time and this, using more data that we had.

Q. I see. Then there has been a six per cent variation in that time. When you got to checking over you found you were six per cent off, is that correct?

A. Yes, sir.

Q. Now, are there any other inaccuracies in these?

A. Well, when we come to compare the total depletion in the field with the production from the field we find that it gives a very high barrels per acre-foot recovery, and that [fol. 280] high barrels per acre-foot recovery is a very difficult thing to explain. Apparently more oil came out of that field than should have come out of it, if these figures are exactly correct, and if there were no oil below the 3,320 foot contour. Now, my own opinion is that there was a substantial amount of oil below the 3,320 contour and that that is one of the causes as to why this acre-feet recovery computed on this basis, which I don't think it is the way to compute it, gives you such high figures.

Q. Well, now, you are saying, substantially, aren't you, that these estimates that the Humble has made of the acre-feet of sand depleted in the Humble Leases is essentially inaccurate?

A. No, sir, I didn't say that.

Q. Well, it is essentially accurate, then, as near as you can determine, is that correct?

A. I think that insofar as these figures are useful for determining our proportion of the reserves in the field, that they are essentially accurate, and the probability of error I think is indicated here, I think, by the comparison by which these two independent maps give essentially the same answer. Now, I think the slight difference in those figures, the comparison between those figures, gives you the idea of the probability of error in determining our percentage of the reserves in the field.

Q. Now, have you made a complete explanation, then? I don't want to cut you off.

A. I think that is all I want to explain at this time.

Q. You said there was a certain amount of oil below the 3,320 level, is that correct?

A. Yes, sir.

[fol. 281] Q. Is it your position that the field is absolutely free communication, there is absolutely free communication there in the East Texas field?

A. Yes, sir.

Q. Was that water level substantially horizontal at the time the field was opened?

A. Yes, sir. I think what we commonly understand as the water level, that is the dividing line between the point at which a well makes pipeline oil and the point at which it makes some water, that that was substantially horizontal.

Q. I understood you to say there was a substantial amount of oil below the 3,320 foot water level?

A. Yes, sir.

Q. Just explain, if the field had reached an equilibrium over geological times and you got the water level accurate, how there could be oil below that if there was free communication in the reservoir?

A. It comes about because in the nature of things this water level isn't a sharp and exact thing. There is no sharp dividing line above which the sand is essentially saturated with oil and below which the sand is essentially saturated with water, but you have a zone there in which the sand grades from a sand which is almost all saturated with oil, let's say eighty-five per cent saturated with oil, and a little lower there is a little more water and less oil

and a little lower there is still more water and still less oil, until finally several feet below there you reach a point where the sand has practically no oil and all water. And this water table must be considered as a zone and not as a sharp, exact dividing line.

[fol. 282] Q. Well, all that makes it pretty hard to determine exactly how many acre-feet of oil sand you have, exactly, in the field and under any particular lease, doesn't it?

A. Yes, sir. I don't believe you can determine exactly, with absolute precision, the number of acre-feet of sand you have in a field.

Q. Now, Mr. Moore, as I understood you with reference to the future production from the Humble leases, you first gave Mr. Baker a figure of 100,000,000 barrels, and that figure was the difference between what you estimate—the difference between 11.15 per cent of what you estimate to be the recoverable oil left in the field and 14.3 per cent of what you estimate to be the original oil left in the field, wasn't it?

A. Yes, sir.

Q. You did not mean to give the court the impression that if the present order is continued in effect from now on the Humble will actually produce 100,000,000 barrels less than the recoverable oil now in place underneath its leases, do you?

A. No, sir.

Q. You didn't mean to give that impression by that at all?

A. No, sir.

Q. Actually the Humble will produce, according to your estimate, somewhere between say 45,000,000 and 85,000,000 less than its recoverable reserves, according to your estimate, is that correct?

A. Yes, sir.

Q. Now, the discrepancy between the two, is it due to the fact that the Humble leases, in general, will produce longer than the average of the field, or by reason of the operation of the present order produce a little more than the average [fol. 283] of the field, so that their production is not directly proportional to the present current percentage of the current allowable?

A. Well, they will never produce more than the average of the field. If this order is projected throughout the life

of the field, why, it means that under that order we will not always be getting this 11.17, or whatever it is we get now. Our percentage will vary as different parts of the field are flooded out.

Q. At certain times, then, during the producing life of the field, under this formula, the Humble will be getting a greater percentage than 11 per cent of the current allowable in the field, won't it?

A. I believe it will, yes, sir.

Q. This order will not work out so you will always get 11 per cent, but you will get more at times, so for that reason you estimate that your loss will be considerably less than the 100,000,000 barrels, which would be a straight application between 11 per cent and 14 per cent of the recoverable oil left in the field?

A. Yes, sir.

Q. That is due, isn't it, Mr. Moore, to the fact that the leases in the fairway and as you go eastward all are of a longer producing life than the leases on the west side of the field?

A. That is primarily what it is due to. It is due to essentially that factor.

Q. Well, in your opinion, will the west side of the field go out first, and then as you go eastward, say to the west side of the fairway, and then the center of the fairway and the east side of the fairway, and then the east side? Is that the way the field is going to be depleted?

[fol. 284] A. It will be approximately in that order. There might be some instances, for instance where the fairway would go out at the same time as the west side, and a few things like that. I can't say exactly, but essentially that is a correct picture.

Q. And there would be, would there not, a direct relation between the top of the sand and the producing life of the various sections of the field? In other words, if the top of the sand is high the water won't get to it until some time after it gets to sections which are lower down on the structure, is that correct?

A. I don't believe that is correct, Mr. Hart, because this water table—that would be true if the water table continued to rise as a level plane. It hasn't done that in the past. I don't believe it will in the future.

Q. How has that risen in the past, and how do you think it will rise in the future?

A. In the past it has risen to a greater extent under the fairway than it has under the west side.

Q. Why is that, Mr. Moore, in your judgment?

A. I think it is due to the structure of the field.

Q. To the what?

A. I think it is due to a combination of several things. The structure of the field. The fact that the water is probably more free to move horizontally than it is vertically, or more free to move along the bedding planes in the sand than across.

Q. What do you mean by the bedding planes? You mean the shale breaks have any influence on the manner in which the water has encroached in the field?

[fol. 285] A. Yes, sir, I think the shale breaks hinder the movement of water across the shale breaks without essentially hindering the horizontal movement of the water.

Q. All right.

A. And finally it is due to the manner in which the oil has been distributed.

Q. Mr. Fischer asked you about these marginal wells, that is, wells that are incapable of pumping more than twenty barrels per day. Generally speaking, where are those marginal wells located, on the edges of the field, the fairway, or where?

A. I believe in general they are on the edges of the field.

Q. They constitute a pretty negligible feature of the production in the East Texas field, don't they?

A. Yes, sir.

Q. As a matter of fact, there won't be any substantial amount of oil lost by any other operators as a result of the operation of these marginal wells, will there?

A. I believe there will be very little oil lost that way.

Q. As a matter of fact, as the field is depleted, as you go on across the field, every well in the field will probably sooner or later get down to where it is a marginal well, won't it?

A. I think you can expect that the amount of marginal wells will increase, but I doubt if it will amount to a tremendous per cent of the field.

Q. Well, as they do get down they will get the same benefit from this marginal allowable that the present wells do, won't they?

A. Yes, sir.

Q. Now, Mr. Moore, these examples that you gave there of leases about on the same position on the structure showed [fol. 286] certain leases that were densely drilled and certain leases that were not so densely drilled. Now, is it your opinion that, assuming the same position on the structure, that the densely drilled leases will produce just as long as the less densely drilled leases, or that they will go out sooner than the less densely drilled leases?

A. I believe they will produce approximately the same length of time. There are some examples where concentrated dense drilling in localized areas has brought about irregular encroachment of the water and has prematurely drowned out that portion of the sand.

Q. Do you think that would generally be true over the field, that the densely drilled portions would probably go out of production before the less densely drilled portions, even where they have the same position on structure?

A. To a limited extent that is true. I think that this dense concentration of wells and high withdrawals from a localized area probably makes wasteful production and irregular encroachment of the water there, so that they probably will not produce as long as the evenly drilled leases which are drilled to the average of the field.

Q. Well, by wasteful production you don't mean those densely drilled leases won't produce as much oil per acre or per hundred acre-foot of sand as the less densely drilled leases, do you?

A. Yes, I think under the densely drilled leases there will be more oil trapped in the sand, unrecoverable, than under the other leases.

Q. I asked you if they wouldn't produce more per foot of sand than the less densely drilled leases?

[fol. 287] A. Of course, they will, because they will be draining a far wider area than the area of the lease.

Q. But whatever the cause may be, in your judgment they probably will not last as long as the less densely drilled areas in the same position on the structure?

A. Yes, sir.

Q. Now, you spoke of the distribution of the allowable under the present order as contrasted with the old order. Now, under the old order there were about 19,000 wells that got exactly twenty barrels a day, isn't that true?

A. I think that is the approximate figure.

Q. Under the present order there aren't any wells in the field that get exactly twenty barrels per day allowable, are there?

A. No, sir.

Q. When you spoke of a flat twenty barrels allowable to a certain number of wells you didn't mean to convey to the court the impression that those wells got twenty barrels and no more and no less, did you?

A. No, sir.

Q. The exact allowable varies from a little over twenty barrels per well up to about fifty barrels per well, doesn't it?

A. Yes, sir.

Q. Generally speaking, the wells located on the leases on the edge of the field will get only a small number of barrels at most in excess of twenty barrels per day, isn't that true?

A. Yes, sir.

Q. And leases in the center of the field, assuming an average density, will get the big allowables, isn't that true, big allowables for wells?

A. Well, they will get about twice as much, possibly, as [fol. 288] those on the edge.

Q. Well, sometimes it will run more than two and a half times, won't it?

A. There probably are examples of that.

Q. Now, the increase in the total field allowable, then, by virtue of the new order went largely to the wells located on tracts which have thick sand and where the density is not as great as it is in other portions of the field, isn't that true, generally speaking?

A. Not exactly. When you take the number of shut down days into account, why, you find that some of the leases in the better part of the field were increased and some of the others were decreased.

Q. The ones that were decreased in the center of the field, taking a producing day, the amount on the days in which they are allowed to produce, the wells that were decreased are the wells that were very densely drilled, like Mr. Fischer's?

A. Yes, sir.

Q. The wells that were not so densely drilled got a substantial increase in allowable?

A. Yes, sir.

Q. The ones that didn't get much advantage in the new order were wells located on leases with thin sands or wells located on leases that were densely drilled, is that true?

A. Yes, sir.

Q. Now, Mr. Fischer asked you as an example about a tract located in the center of the field that had a small area and he asked you what the allowable would be if you eliminated this base or minimum allowable. I believe you said it would be about two barrels per day?

A. Yes, sir.

[fol. 289] Q. Suppose you take an average lease on the edge of the field, say on the west side, and five acres, one well to five acres, and say it has only from five up to ten feet of sand, and you eliminated this marginal allowable, would you know how much allowable a well on a tract like that would get per day?

A. On five acres?

Q. Say five acres and five feet of sand.

A. To make a rough calculation, it would get about a fourth of the average well, and the average well on this schedule now gets about thirty barrels. It would probably get, roughly, seven or eight barrels per day.

Q. On a five acre tract?

A. Yes, sir.

Q. With five feet of sand?

A. I was figuring ten feet. I was guessing approximately ten feet. And they are just approximate figures, Mr. Hart.

Redirect examination.

Questions by Mr. Baker:

Q. Mr. Moore, Mr. Fischer was talking about a tract forty by forty feet. It wouldn't have much oil in place under it, would it?

A. No, sir.

Q. Don't you think if that well was produced any length of time at all it has probably produced already a good deal more than its reserves?

A. Yes, sir.

Q. Will you state whether or not a two barrel allowable to a well of that sort would enable it to recover more than [fol. 290] its reserves during the producing life of the field, in all probability?

A. If it were produced at that rate I believe it would.

Q. Do you know of anything that would prevent the pooling of small tracts, voluntary pooling of them?

A. It is done in other fields.

Mr. Hart: We object to that as being a legal conclusion. It is a question of law.

Judge Sibley: I suppose all we have to deal with is the reasonableness of what was done. The wells are already there.

Mr. Baker: Very well, Your Honor.

Q. Some suggestion was made here that one way for the Humble to remedy its situation was to drill more wells. If it were to drill down—if that remedy were pursued, state whether or not in your opinion the tendency would be always to have to drill down to the lowest density?

Mr. Hart: We object to that as being pure conjecture. It isn't an estimate made on any geological or engineering facts. It is just a speculation on what might happen if they drilled, and then somebody else drilled.

Judge Sibley: I suppose that is more of an argument than expert opinion.

Mr. Baker: Very well, Your Honor.

Q. How many wells would it take to drill the field down to one well to an acre?

A. It would take about 75,000 or 80,000 more wells.

Mr. Hart: We object to that as being entirely immaterial. Nobody is advocating, that I know of, at this time that [fol. 291] that should be done. Certainly that is not an issue in this case.

Judge Sibley: I suppose the cost of it is the reason why it isn't done.

Mr. Hart: They are all in the oil business to make money, and if they can't make it, considering the costs necessary, they are not going to drill.

Judge Sibley: I will let the evidence stay in as to how many wells it would take to reach that density, but I don't know that we had better press the matter too much. The Commission has a veto on allowing all these wells, I understand.

Mr. Baker: I would like to make an inquiry as to whether Mr. Hart will admit the Humble Company shouldn't be

required to drill any more wells. If so I will drop this line of questioning.

Mr. Hart: No, I won't make an admission like that. I don't know whether they should or not. It is not an issue in this case, as I see it.

Mr. Baker: You think that is not an issue in this case?

Mr. Hart: It may be that they ought to go on and drill more, I don't know. The Commission is not now trying to require them to. Maybe you haven't taken advantage of the rights you have by not trying to get some more wells and drill them, and by refusing to go ahead and make an application. Maybe you haven't exhausted your administrative remedy.

Mr. Baker: We are taking the position that we have drilled more than enough wells to drill our property, and that it [fol. 292] would be throwing money away to drill any more.

Q. Assuming that this drilling were to go on indefinitely, say down to one well to one acre, with the present allowable what would be the per well allowable?

A. It would be—you mean assuming a 400,000 barrel top?

Q. Yes, sir, assuming the present top allowable.

A. It would be about three barrels per well on the average.

Q. Drag all, on the average, down to that level?

A. Yes, sir.

Q. Now, you stated something about the percentage of recovery under open flow conditions. State whether or not you think that oil would be lost by trapping and development and coning?

A. I believe it would, yes, sir.

Q. Will you explain what you mean by that?

A. Well, these sands are widely varying in textures, and under a rapid rate of flow, why, the water is going to move faster through some sands than through others, and it will tend to move toward the concentrated point of localized withdrawals, and this will result in the oil contained in some portions of the sand being completely enveloped by water and remaining there substantially unrecoverable. About the only way to recover it would be to dig the sand out and wash it out. Now, under slow rates of production, under a proper rate of production, why, the various physical forces that operated on this water would tend to keep the table approximately smooth and their movement more

or less uniform through all of the sands of all the varying textures, and it will wash the sands free of their recoverable oil.

Q. You spoke, I believe in answer to a question by Mr. Hart, you said something about the advantages that wells [fol. 293] enjoy on the east side. Do you or not think that that natural advantage is anything nearly compatible with the advantage that those leases enjoy under the existing order?

A. They enjoy far greater advantage under the existing order.

Q. That is by virtue of what factor?

A. By virtue of the application of the twenty barrel per well minimum to those leases.

Q. I believe you stated in answer to one question of Mr. Hart's that the wells in the center of the field produced in the order of from two to two and a half times what they do on the edges of the field?

A. Yes, sir.

Q. Will you state the order of magnitude of sand thickness and reserves in comparing these areas?

A. Well, it is about eight or ten times greater on the fairway than on the edges.

Q. Is that one reason why you say that under the existing order the fairway leases could never recover the equivalent of their oil in place?

A. Yes, sir.

Q. Now, I believe you stated in answer to one question here that you cannot determine with absolute accuracy the number of acre-feet in the field. I wish to ask you whether or not you can determine with approximate accuracy the relative percentage of acre-feet of sand between the various leases in the field?

A. Yes, I believe you can. That is indicated by the fact that these several—at least two independent measurements of that quantity have come within—well, they actually came within about a half of one per cent of an exact check.

[fol. 294] Recross-examination.

Questions by Mr. Moody:

Q. Mr. Moore, this drilling to the average density of the acre-feet of sand, that is, drilling leases to the average density of acre-feet of sand drilling in the field, that would

be an impossibility, wouldn't it, for the reason that when a man drilled his lease down to the present average density for acre-feet or hundred acre-feet, why, automatically the density would change, and so on every time you drilled a well you would change your average density per hundred acre-feet of sand, isn't that true?

A. Yes, sir, you would have to drill down to the density of the most closely drilled lease in the field.

Q. So the result of it is, from a practical standpoint, is it not, that the field cannot be drilled so that each lease is drilled to the average density of drilling per hundred acre-feet of sand in the leases?

A. I believe that would be impractical.

Q. It is not only impractical, it is not a possible thing to do, is it, Mr. Moore?

A. I suppose it is mechanically possible to put twenty wells on an acre.

Q. For 133,000 acres?

A. On some of them you would have to have more than that.

Q. You wouldn't have room for slush pits to do your drilling, would you?

A. I don't believe you would.

Q. Now, about this east side advantage you are talking about, you are talking about under open flow conditions, are you not? When you spoke of east side advantages?

[fol. 295] A. I don't think the east side has much advantage under open flow.

Q. Then that would not exist then?

A. No, sir.

Q. Now, then, does this order as it is now enforced and applied in the field give to the east side a greater advantage than it would have under open flow conditions?

A. Yes, sir, it does.

Q. Does it reduce the advantage that the other parts of the field would have under open flow conditions?

A. I don't believe it reduces the advantage to the west side much. It does to the fairway.

Recross-examination.

Questions by Mr. Fischer:

Q. Mr. Moore, if the Commission gave the Humble 14.3 per cent and Rowan & Nichols and these other folks what

they are claiming that they have been deprived of, and kept the minimum of twenty barrels per well, it would raise the allowable quite a little in the field, wouldn't it?

A. You couldn't give them that and keep a twenty barrel minimum.

Q. I say if you gave them those figures it would raise the allowable, wouldn't it?

A. You couldn't do that. It is just impossible to do that.

Q. You couldn't?

A. No, sir.

Q. Well, how come you couldn't if you gave 14 per cent instead of 11 per cent, why wouldn't it raise the allowable for the field?

[fol. 296] A. Mr. Fischer, everybody's leases would add up to a hundred per cent of the field allowable and then you still would have to give them a twenty barrel minimum on top of that, and you just can't do it.

Q. All right. Your complaint is that you say the Commission says they have given you the full amount of your proportion and you say they haven't?

A. Yes, sir. I don't know what the complaint is.

Q. Now, you are one of these folks that believes that more than 450,000 barrels is wasteful producing of the field, aren't you?

A. Yes, sir, I believe that would be conducive to waste.

Q. Under the present order if we produce twenty barrels it would be 690,000 barrels?

A. Yes, sir.

Q. So we cut back to seventeen barrels and it makes about 450,000 barrels?

A. Somewhere around there.

Q. Now, if we are going to produce thirty days a month and keep it within your estimate of 450,000 barrels a day, why, then naturally the little wells have to be cut down, don't they? Is that the result?

A. Well, yes, sir.

Recross examination.

Questions by Mr. Moody:

Q. Under your statement, returning for a second to that matter of drilling an average density per hundred acre-feet in the field, that is the only way that this order could be made to operate and give each man his oil under his land

[fol. 297] as the other man got the oil under his land, isn't that correct?

A. Yes, sir.

Recross examination.

Questions by Mr. Hart:

Q. Mr. Moore, do you mean that as applied to the current allowable or do you mean that as applied to the ultimate production in the field?

A. That would apply to the current allowable and would also apply to the relative ultimate production of similarly located—of leases similarly located on the structure.

Q. Now, leases similarly located on a structure have about the same sand thickness, don't they? They have about the same sand thickness as the lease next to them?

A. Approximately.

Q. Well, if you had two leases similarly located on the structure and you had them drilled to the same density, that is the same density per surface acreage, they would also be drilled to substantially the same density per acre-feet of sand, wouldn't they?

A. Yes, sir.

Q. Then all you would have to do——

A. That is if you had the same thickness.

Q. Then all you would have to do is drill them down to about the same average density per acre in the same structure?

A. No, sir. If you drill down to the same density per acre the fairway leases would still suffer a disadvantage.

Q. Even in spite of the fact that they will produce longer than the leases to the west of them?

A. Yes, sir. By that I mean—the east side edge, as I [fol. 298] have said, has a considerable advantage over the fairway and the west side, the way the order is now written. If you drill down to the same density per acre the east edge would still retain its great advantage. If you drill down to the same density per acre-foot the east edge may still have some advantage, but it wouldn't be as disproportionate as it now is, or if you drilled down to the same density per acre.

Q. Do you believe there is a certain area on the eastern edge where the sands are relatively impermeable and which

probably will go out of production before the center of the field or the eastern portion of the fairway?

A. Yes, there is a small fringe along the east edge where I believe that will occur.

Q. About how wide is that fringe?

A. A location or so.

Q. What do you mean?

A. Maybe a location or two.

Q. What do you mean by that?

A. Just a few hundred feet. There is an area of that field over on the east edge where these oil bearing sands sort of gradually fade into shale. There are a number of wells which have been completed in an area where it is just questionable whether there is much oil there or not, and it is only by virtue of the fact that the allowable of the field has been kept so low that those leases have been able to produce as much as they have. Now, in this area which is on the border line between sand and shale, and where the sand grades into the shale, there are some small wells that have been produced, and the chances are those wells will not be able to produce economically as long as the wells [fol. 299] that are completed in the clean sand in the east edge of the field.

Redirect examination.

Questions by Mr. Baker:

Q. Mr. Moore, I believe you testified awhile ago that you had made some computations to determine what the effect upon the plaintiff would be of this order in the event it was continued during the balance of the life of the field?

A. Yes, sir.

Q. I believe you said some of the plaintiff's leases on the east side would recover considerably more than their reserves?

A. Yes, sir.

Q. What was the result with respect to some leases in the fairway or all of the company's leases in the fairway and the west side?

A. Well, they will be drained to a very great extent, and some of our leases will be drained and some of them will drain others, but the leases of ours which are drained will lose far more oil than our leases which benefit will gain.

Q. Is that why you gave that figure from 45,000,000 to 90,000,000 barrels?

A. Yes, sir.

Q. What do you mean by that?

A. I mean that I think it is going to come out about 85,000,000 barrels, but there is a possibility of error in making the computations that I made in order to arrive at that figure. I didn't want to give the impression that it was a mathematically precise figure when there was some possibility of error, so in spite of the fact that my computations [fol. 300] said 85,000,000, I quoted a figure from 45,000,000 to 90,000,000 to allow for errors.

Q. You mean by that that taken over all the Humble Company's leases, considering the amount that will be drained to some of its leases and the amount that will be drained from other of its leases, that it will suffer a net drainage of the magnitude you mentioned?

A. Yes, sir.

Q. You spoke of marginal wells awhile ago. What kind of wells do you have in mind?

A. I meant pumping wells which are incapable of producing twenty barrels of oil per day.

Q. You just took, on its face, the Railroad Commission's definition in this order of the 24th of January?

A. Yes, sir.

(Witness excused.)

Mr. Baker: That is all we have at this time, but we do have some evidence as to adjustment of allowable which we will wish to introduce in evidence, but we cannot do so at this time. We will have to get our information from the records. We would like to be permitted to introduce that a little later.

Judge Sibley: All right. You wish to rest, then, at this point, but you reserve the right to supplement the record in the particular you speak of?

Mr. Baker: Yes, sir, and to rebut whatever may come up.

Mr. Hart: There was certain information which Mr. Sorenson said he would get for us, and we will want to [fol. 301] further cross-examine him on the basis of that.

Mr. Fischer: I have no further testimony.

The court then, at 12:00 o'clock noon, recessed until 2:00 o'clock p. m., of the same day, at which time the following proceedings were had:

[fol. 302] Afternoon Session

2:00 o'clock

OFFERS IN EVIDENCE

Judge Sibley: Governow Moody, I believe it is your time.

Mr. Moody: Yes, sir. Shall I proceed, Your Honor?

Judge Sibley: Yes, sir.

Mr. Moody: May it please the Court, in support of Rowan & Nichols Oil Company's application for temporary injunction, the complainant offers as an affidavit Complainant's Original Bill of Complaint, which is verified, and also offers Complainant's Supplemental Bill of Complaint.

Mr. Hart: If the Court please, we object to this. I understood that this was going to be tried on oral testimony, and I understood that no affidavits were to be used.

Judge Sibley: Well, that was not specifically stated. I think that Governor Moody declined to go into a final hearing, but stated that he would submit only his application for temporary injunction. Isn't that true, Governor?

Mr. Moody: No, I didn't say that exactly, Your Honor. I said that we would press our application for interlocutory injunction or temporary injunction, but that we would during the trial offer to submit the case on the merits.

Judge Sibley: Yes, sir; all right, well, wouldn't this being true, then, that as far as the temporary injunction [fol. 303] was concerned, he could use his bill as an affidavit, but it would not be available for consideration on the final decree?

Mr. Moody: That is correct.

Mr. Hart: Who swore to that?

Mr. Moody: Mr. Rowan.

Mr. Hart: Mr. Rowan is here and can testify.

Mr. Moody: Yes, sir, Mr. Rowan is here. Our understanding is that the Court will not hear oral testimony on an application for interlocutory injunction.

Judge Sibley: Well, it is discretionary, but we usually do not do so.

Mr. Hart: May I ask this, will it be necessary for the Commission to put its evidence in affidavit form?

Judge Sibley: No, I don't think so. I am just speaking for myself, but we are willing to take oral testimony when it is offered.

Mr. Hart: Yes, sir.

Mr. Moody: May it please the Court, I do not want to be unduly insistent about this part, but in an effort to keep the record straight, so far as my side of the case is concerned, I desire to offer in evidence the Exhibits Nos. 1, 2, 3, 4, 5, 6, and 7 offered by the Humble Oil & Refining Company and identified and proven up by the witness, Sorenson; and then I desire to offer also his direct examination and his answers to such questions as were propounded to him by me. I then desire to offer in evidence these Exhibits 8, 10, 11, 12, 13, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25, offered in evidence by the Humble Oil and Refining Company, and proved up by the witness [fol. 304] T. V. Moore, and so much of the direct testimony of the witness T. V. Moore as was in explanation of the exhibits offered now by Rowan & Nichols. And then I also desire to offer the answers of the witness T. V. Moore to such questions as were propounded to him by me.

Judge Sibley: They are all in evidence.

Mr. Moody: Sir?

Judge Sibley: They are all in evidence, I say.

Mr. Moody: Yes, sir. Then I also desire to offer in evidence a copy of the order of the Railroad Commission of date December 20, 1939, prescribing the present plan of proration for the East Texas field, except as it was subsequently modified by the orders of January 24, 1940, which are included in these exhibits that I mentioned; and in offering the copy of the order of December 20, 1939, I am offering the copy attached to the Complainant's Original Bill of Complaint and identified as Exhibit "C", and Mr. Hart and I have an understanding that if that is not a correct copy of the order, why, that it may be—any mistakes that have been made in copying may be corrected, so as to make it truly conform to the order. I think it is a true copy of the order. Is that not right and satisfactory, Mr. Hart?

Mr. Hart: Yes, sir.

Mr. Moody: We have two witnesses. Does Your Honor care to swear both witnesses at the same time?

Judge Sibley: Yes, the Clerk may swear the witnesses.

(Thereupon, two witnesses were sworn by the Clerk.)

[fol. 305] A. H. ROWAN, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Moody:

Q. State your name, please.

A. A. H. Rowan.

Q. Where do you live, Mr. Rowan?

A. Fort Worth, Texas.

Q. What business are you engaged in?

A. I am engaged in the oil business and the drilling contracting business.

Q. Are you in any way connected with the Rowan & Nichols Oil Company?

A. I am President of that Company.

Q. Is Rowan & Nichols Oil Company a corporation?

A. Yes, sir.

Q. State to the Court, please, Mr. Rowan, the experience you have had as a practical oil operator.

A. Well, I have been engaged in the drilling and contracting business since January 1, 1924, for myself, and since shortly after that I have been engaged in producing for myself.

Q. All right. Has that drilling business involved the drilling and completion of wells in various fields in Texas and other states?

A. Yes, sir, in Texas and Louisiana and Oklahoma and Arkansas and New Mexico.

Q. Have you drilled wells in the various sections of Texas where oil is produced—I mean by that, East Texas, [fol. 306] the Gulf Coast area, West Texas, Central Texas, and the Plains country.

A. Yes, sir, I have, in all of those places.

Q. Have you had actual contact with drilling operations in the completion of wells?

A. Yes, sir, I have.

Q. Have you made a study of the oil-bearing sands and formations in which oil is found in this country?

A. Yes, sir.

Q. And a study of cores and things of that kind?

A. Yes, sir, I have.

Q. In addition to your operations as a drilling contractor, you own production, do you?

A. Yes, sir, I do.

Q. Mr. Rowan, involved in this suit is a tract of land known as the Rowan & Nichols Todd "A" lease in the Castleberry Survey in Gregg County, Texas.

A. Yes, sir.

Q. Does the Rowan & Nichols Oil Company have an oil and gas lease covering that?

A. Yes, sir, they do.

Q. Covering that tract of land?

A. Yes, sir.

Q. What is the ownership of Rowan & Nichols Oil Company in the tract of land, with respect to whether it is a royalty interest or a working interest, and if a working interest, what part of the working interest?

A. We own a seven-eighths leasehold estate.

Q. Are you drilling on the lease now?

A. Yes, sir.

[fol. 307] Q. How many acres are in that lease?

A. There is 28.25 acres.

Q. Yes, sir. How many wells have been drilled on the lease?

A. Seven wells.

Q. Seven wells?

A. Yes, sir.

Q. Mr. Rowan, this suit complains of the order of the Railroad Commission that was adopted on December 20, or promulgated on December 20, 1939, effective January 1, 1940, and by supplemental order—two orders promulgated on January 24, 1940, effective February 1, 1940. Have you made—has Rowan & Nichols caused application to be made to the Railroad Commission for relief from what that company believes to be the inequities that it suffers from the enforcement of those orders?

A. Prior to the institution of this suit, yes, sir, we did make an application.

Q. Has any action been taken by the Commission in granting your application?

A. Not that I know of, no, sir.

Q. Now, are you familiar with how the wells on the Todd "A" lease were drilled and completed?

A. Yes, sir, I am familiar with it.

Q. Are you familiar with—were you present when potential tests were taken on that lease?

A. Yes, sir, I was.

Q. How many potential tests were taken on the lease?

A. I believe there were two tests taken, Governor.

Q. Do you know what those—how were they taken?

A. Well, they were taken in accordance with the orders [fol. 308] of the Railroad Commission. The last test was taken on a two-hour period, with two four-inch flow lines coming off the casing, and one four-inch flow line coming off the tubing. I believe then the two-hour gauge was divided in two, and that gave you the hourly potential of that well.

Q. Do you remember what the hourly potential of that well was, so tested?

A. 964 barrels, I believe.

Q. Was that test taken under the supervision of an employee of the Railroad Commission?

A. Yes, sir, they had the resident engineer in East Texas present.

Q. Now, the, do you know what—have you examined the proration schedule promulgated by the Railroad Commission, to ascertain what potentials they allow the wells on this lease at the present time?

A. Yes, sir, I have. They allow a potential varying from 960 to 965 barrels.

Q. That is, I understand that one or more of the wells is allowed a 960 barrel potential, and one or more allowed 965?

A. Yes, sir.

Q. They are all between those figures?

A. Yes, sir, they are all between those figures.

Q. Those seven wells?

A. Yes, sir.

Q. Now, is that shown, Mr. Rowan, in this proration schedule for February, 1940, marked Plaintiff's Exhibit No. 11?

A. I don't believe it is, Governor.

Q. It does not show in that?

A. I don't believe it shows in that.

[fol. 309] Mr. Moody: I do not desire to offer all that in evidence, just as to Rowan & Nichols Oil Company.

Mr. Hart: I don't believe we will have any objection, if the Court please.

Q. Do you have here available a copy of the Railroad Commission's potential, or, rather, proration schedule as

is put—as is had in the office of the Railroad Commission?

A. Yes, sir, we brought a copy of it from Mr. Byrom, and it is represented to us as being a true copy.

Q. All right. Now, does that show what potentials they, the Railroad Commission allows these wells in figuring the allowable under this order of January 24, 1940?

A. Yes, it does.

Q. What potentials do they allow the wells?

A. On the Todd "A" lease?

Q. Yes, sir.

A. It varies from 960 to 965 barrels.

Q. All right. Now, does this schedule show the—were you present when bottom hole pressure tests were made on the lease—on the wells on the Todd "A" lease?

A. No, sir, I don't think there has ever been a bottom hole pressure test made on any well on that lease.

Q. Have you examined the Railroad Commission's bottom hole pressure map?

A. Yes, sir.

Q. Their contour map showing the bottom hole pressures in the field?

A. Yes, sir, I have seen the map.

Q. Do you know what that—the bottom hole pressure map [fol. 310] shows the wells on this Todd "A" lease is?

A. I don't know what the latest map shows; that schedule shows that they have 1115 pounds.

Q. You mean that the Railroad Commission's proration schedule shows these wells to have 1115 pounds bottom hole pressure?

A. Yes, sir.

Q. Now, Mr. Rowan, have you examined the Railroad Commission's sand thickness map, identified in this record as Plaintiff's Exhibit 4, to see what that map shows with respect to the sand thickness under the Rowan & Nichols Todd "A" lease?

A. Yes, sir.

Q. What does it show?

A. It shows it is between 90 and 100-foot contour line.

Q. Now, is the 100-foot contour line at the west edge of the lease, and the 90-foot contour line at the east edge of the lease?

A. Yes, sir, the 100-foot contour line almost touches the northwest corner of the lease, and the 90-foot is just a little bit southeast of the corner of the lease.

Q. Mr. Rowan, is the lease longer east and west than it is north and south?

A. It is longer east and west.

Q. Than it is north and south?

A. Than it is north and south.

Q. Now, have you examined the Railroad Commission's proration schedule to see what sand thickness the schedule allowed to Rowan & Nichols Todd "A" lease?

A. Yes, sir, I have; the various wells are given an allowance of from 90 feet to 98 feet, and the average is about 94 feet.

Q. All right. While wells is it that are allowed 98 feet [fol. 311] of sand thickness?

A. The ones that are to the west.

Q. Now, Mr. Rowan, do you know the number of wells that have been drilled and that are now producing in the East Texas field?

A. There are approximately 25,900.

Q. You do not have that figure exactly from this proration schedule?

A. No, sir, but it is close to that.

Q. Now, how much oil are the wells of Rowan & Nichols on its Todd "A" lease allowed to produce under this proration schedule?

A. The total barrels of each individual well?

Q. Well, you might give it to me, the allowable fixed by the proration schedule for the lease, and then state the allowables to each of the wells, please sir.

A. The total allowable is 210.56 barrels for the entire lease, and the wells range from slightly over 36 barrels a day to a top of 38 barrels per day.

Q. Do you know what the average for the seven wells is?

A. The average is about 37 barrels.

Q. Now, then, are you acquainted with the Wood lease—the tract or lease known as the Wood tract in the Castleberry Survey adjoining Rowan & Nichols Todd "B" lease?

A. Yes, sir, I can.

Q. How far is that lease——

Mr. Hart: If the Court please, we want to object to any testimony about specific leases. In the first place, there is no evidence that this particular lease will have any effect upon the plaintiff's lease, and in the second place, the par- [fol. 312] ticular examples won't have any bearing on the is-

sue in this case, which is whether the Rowan & Nichols Oil Company lease is getting its fair share, considering the field as a whole.

Mr. Moody: I think, Your Honor, I will meet his objection in a moment.

Q. Mr. Rowan, are you prepared to testify as to whether or not oil in the East Texas field has a tendency under present conditions of production in the field, to move to the east?

A. Yes, sir, it does.

Mr. Hart: If the Court please, we want to object to any question or to any questions that may be directed to Mr. Rowan on the basis of—that would require an opinion as an expert, because Mr. Rowan has not been qualified as an engineer or a geologist to testify about conditions in the East Texas field.

Judge Sibley: He said he has had fifteen years' experience. That would make him an expert. That is, what "expert" really means, is experience.

Mr. Hart: Well, my objection is that unless a man is known to have the training and be qualified as an expert, he cannot give his expert opinion on a matter.

Judge Sibley: Well, it might have effect on the weight of it in considering whether his opinion is likely to be weighty or not, but I think practical experience is one way of becoming an expert.

Mr. Hart: We further object that under the evidence in this case, it is not shown that Mr. Rowan is qualified in any respect to give his expert opinion, and we except to [fol. 313] the ruling of the Court.

Q. Mr. Rowan, included in that fifteen years' experience or so that you had in the—or more; I believe you said 1921 you went into the drilling business, did you not?

A. 1924, sixteen years.

Q. All right, sixteen years. Mr. Rowan, included in that experience have you had experience in drilling oil wells and completing oil wells in the East Texas field, besides your own?

A. Yes, sir, many of them.

Q. Has that drilling been done under your supervision?

A. It has, yes, sir.

Q. You had charge of that?

A. Yes, sir.

Q. Have you drilled wells in all parts of the field?

A. Yes, sir, we have, substantially all parts of the field.

Q. Do you know generally the character of the sands found in that field, the depth at which they are found, the thickness in various portions of the field, the productivity of wells in various sections of the field?

A. Yes, sir.

Q. Are you familiar with the pressures that obtain in that field?

A. I have looked at the Railroad Commission's pressure contour map.

Q. Well, you are acquainted with the records the Railroad Commission has of pressures, then?

A. Yes, sir.

Q. Mr. Rowan, where is the thickest part of the oil sand in the field?

[fol. 314] A. The thickest part is in the middle of the field—the middle one-third.

Q. You mean by that running from north to south, or east to west?

A. Running from east to west.

Q. You mean cross-wise of the field, or length-wise?

A. Well, the thickest part is in the middle of the field, going from west to east.

Q. Well, it averages about four miles across the field, that way?

A. Well, it averages about four miles, yes, sir.

Q. In width?

A. Yes, sir.

Q. Now, what I am trying to get at, does the thick part of the field run length-wise of the field, or cross-wise of the field?

A. It runs north and south.

Q. All right. Now, are you familiar with the part of the field under which water is found—do you know where that is?

A. Yes, sir, it is on the west side of the field.

Q. Are you familiar with the part of the field where an impervious rock is found?

A. Yes, sir, it is on the east side.

Q. On the east side. Now, from your experience in drilling in the field and from your studying of maps and records pertaining to this field, particularly the maps of the Rail-

road Commission, do you know where the lower pressures are in the East Texas oil field?

A. Yes, sir.

Q. What part of the field are they in?

[fol. 315] A. There is a pressure gradient from west to east, and the lowest pressures are on the east.

Q. All right. Are you familiar, from examination, from being on the ground, and from knowledge of the Rowan & Nichols Todd "A" lease, and knowledge of drilling that has been over to the east of that lease, whether or not the drilling—there is denser drilling in a large area east of that lease than the actual drilling on the Todd "A" lease?

A. Yes, sir, there is.

Q. You mean that the drilling to the east is denser?

A. I mean that the drilling to the east is denser.

Q. All right. From your experience in the operation of oil wells and the drilling of oil wells, and your study of the East Texas field, what are the facts with respect to whether or not oil drains from points of higher pressure to points of lower pressure?

A. Oil will drain from points of higher pressure to points of lower pressure.

Q. All right. Are the pressures on the Rowan & Nichols Todd "A" lease higher or lower than the pressures in the area to the east of the Todd "A" lease?

A. They are higher.

Q. What is your opinion with respect to whether or not the denser drilling to the east of the Todd lease—the fact that the drilling over there is denser than on the Todd lease, and lower pressures east of the Todd lease—what is your opinion as to whether or not oil drains from the Todd lease toward the areas of lower pressure and denser drilling?

[fol. 316] A. It is my opinion that the oil drains to the lower pressures on the east from our properties.

Q. All right. Now, then, are there areas in the east of that field and east of the Todd lease where the drilling is in places down to a fraction of an acre per well?

A. Yes, sir.

Q. Are you acquainted with the Wood lease that adjoins the Todd "B" lease?

A. I am, yes, sir.

Q. How far is the Todd "B" lease from Rowan & Nichols' Todd "A" lease?

A. I didn't get that question.

Q. How far is it from the Rowan & Nichols' Todd "A" lease to the Rowan & Nichols' Todd "B" lease?

A. It is about 1100 feet.

Q. Now, does the Wood tract adjoin—is it more than 1100 feet from the Todd "A" lease?

A. Yes, sir, it is more than 1100; it is across the "B" lease, which is 580 feet wide.

Q. Are you familiar with the—do you know about the area of the Wood lease?

A. Yes, sir, I know about the area of it.

Q. What is its area?

A. Its area is about a third of an acre.

Q. Since the prior Rowan & Nichols Oil Company lawsuit was tried, has there been a lawsuit over that particular tract of land, upon which you base your statement now that it is about a third of an acre?

A. Yes, sir, there was a lawsuit in Tyler in the United States District Court; the Shell sued Wood, and the United [fol. 317] States District Court for the Tyler Division established the northern boundary of the Shell-Basham lease, which established the southern boundary of the Wood tract.

Q. All right, sir; that is the basis on which you say it is about a third of an acre?

A. Yes, sir; and the distance between the Shell lease and our Todd "B" lease, which is the land that Wood is claiming, is about a third of an acre now.

Q. All right. Now, how many wells have been drilled on this Wood lease?

A. One well.

Q. Do you know what the Railroad Commission gives as the sand thickness there?

A. Yes, sir, 89 feet.

Q. Do you know what the Railroad Commission gives as the potential of the Wood well?

A. 960 barrels.

Q. Do you know what the Railroad Commission gives as the bottom hole pressure on the Wood lease?

A. 1110 pounds.

Q. Do you know what allowable is granted to the well on the Wood lease?

A. Slightly over 24 barrels.

Q. Now, then, do you know how much that lease—have you calculated how much oil that lease is allowed to produce per hundred acres of oil-bearing sand—hundred acre-feet per day, I mean?

A. About 81 barrels per day per hundred acre-feet.

[fol. 318] Q. All right. How much are you allowed to produce, or is Rowan & Nichols Oil Company allowed to produce per day per hundred acre-feet of sand on the Rowan & Nichols Todd "A" lease?

A. Well, using the Railroad Commission's sand thickness map, we are allowed to produce 10.19 barrels per hundred acre-feet.

Q. 10.19 barrels per day per 100 acre-feet?

A. Yes, sir.

Q. Approximately one-eighth of what the Wood well is allowed?

A. Just about ⅛th, yes, sir.

Q. Are the—the sand thicknesses in Rowan & Nichols Todd "A" lease are a little greater than they are on the Wood tract?

A. Yes, sir, we have more sand thickness.

Q. The potentials are about the same?

A. The potentials are about the same, a little higher on our lease.

Q. And the bottom hole pressure is about——

A. It averages 5 pounds higher on our lease than it does on the Wood.

Q. In order to relate the facts with respect to the Todd "A" lease with respect to the facts of the Todd "B" lease, how many acres were in the Todd "B" lease involved in the trial of Rowan & Nichols case?

A. 25 acres.

Q. Do you know what the potential of the wells on that lease were?

A. It run about the same, from about 960 to about 965.

[fol. 319] Q. Do you know what the bottom hole pressure was?

A. Well, it went from about 1,115 to about 1,110.

Q. Do you remember what the sand thickness was there?

A. The sand thickness was just slightly less than on the "A" lease, run from about 89, maybe, to 95.

Q. How much oil are you allowed to produce per day off of the Todd "B" lease under the present order?

A. Under the orders of the Railroad Commission?

Q. Yes.

A. 205 barrels.

Q. That is what it would calculate under the proration order now in force?

A. Yes, sir.

Q. Now, Mr. Rowan, have you made any calculations of the leases lying to the east of the Rowan & Nichols Todd "A" lease?

A. Yes, sir, I made some calculations.

Q. I will let you mark this.

(Thereupon said instrument was marked for identification as Plaintiff's Exhibit No. 26.)

Q. Mr. Rowan, the Reporter has marked this Plaintiff's Exhibit 26. Will you state the—where the—on this exhibit, the leases are shown under the—by the name of the lessee under the column headed "Company and lease," is it not?

A. That is correct.

Q. Then there is a column showing the acreage of the lease?

A. Yes, sir.

Q. And the sand thickness?

A. Yes, sir.

Q. The acre feet of sand?

A. Yes, sir.

[fol. 320] Q. The allowable for each lease respectively?

A. That is correct.

Q. The density of drilling?

A. Correct.

Q. And then the column to the right shows the barrels per 100 acre-feet of sand, is that correct?

A. Yes, sir.

Q. Where are the leases that are shown on this list located with respect to Rowan & Nichols Todd "A" lease?

A. These leases all lie in an easterly direction from the Todd "A" lease, and they are located in the Castleberry Survey, or the Robinson Survey.

Q. Is the Castleberry Survey the same survey the Rowan & Nichols Todd "A" is located in?

A. Yes, sir.

Q. Where does the Robinson lease lie with respect to the Castleberry lease?

A. It joins the Castleberry survey on the east.

Q. Are these leases all located in the direction in which you say drainage is taking place from your lease to the east?

A. Yes, sir.

Q. Or from the Rowan & Nichols Todd "A" lease?

A. Yes, sir.

Q. Does that column to the right—to the acreage shown—where do you get the data from which you show the acreage for these respective leases?

A. I got it from the Railroad Commission schedule.

Q. When you say Railroad Commission schedule do you mean Railroad Commission proration schedule?

A. I mean the schedule they prepared, they worked their proration schedule up from.

[fol. 321] Q. It is from the Railroad—it is from the records of the Railroad Commission then, whatever the name of it would be?

A. Yes, sir.

Q. As far as sand thickness is concerned, as shown on this exhibit, where did you get the facts as to that?

A. I got it out of the Railroad Commission records also, the same schedule we got the allowables from, the density.

Q. Acre-feet of sand. That figure is figured from the acreage of sand thickness, isn't it?

A. Yes, sir, that is a multiplication of the two.

Q. You computed that yourself?

A. Yes, sir.

Q. Where do you get the allowables of these several leases?

A. Out of their schedules.

Q. Out of the Railroad Commission records?

A. Yes, sir.

Q. Where do you get the record as to density, as shown on this list?

A. Out of the Railroad Commission schedule.

Q. The final column to the right, you compute the number of barrels these leases are allowed to produce, respectively?

A. That is a mathematical computation.

Q. Which you made, and you think they are made accurately?

A. Yes, sir.

Q. That shows Rowan & Nichols produced 10.11 barrels per cubic acre foot, and the top one on there, is 45.21 barrels per 100 acre feet.

A. That one right underneath the Rowan & Nichols.

Q. In this column marked "barrels per 100 acre-feet," that is barrels per day per 100 acre-feet, isn't it?

[fol. 322] A. That is correct.

Q. This 100 acre-feet means 100 acre-feet of productive sand?

A. Yes, sir.

Mr. Moody: We offer this schedule in evidence, if the Court please.

(Thereupon said schedule was admitted in evidence as Plaintiff's Exhibit No. 26.)

Q. In that part of the field, what are the facts—I mean, where these leases are located as shown on that list, other than the Rowan & Nichols Todd "A" lease, what are the facts with respect to whether that is a part of the field in which the pressures are lower, according to the Railroad Commission records, than the pressure on your lease?

A. They are lower, yes, sir.

Q. In that regard, let me ask you this question. Are you in accord with the records of the Railroad Commission in so far as they show that this area to the east has a lower bottom hole pressure than the Rowan & Nichols Todd "A" lease?

A. Yes, I think the pressure contour map as made up by the Railroad Commission is substantially correct.

Q. All right. Mr. Rowan, do you have figures on the amount of oil that has been produced to date from Rowan & Nichols Todd "A" lease?

A. Yes, sir, I have them.

Q. Will you state the figure, please, sir.

A. The total production through January 1, 1940 was 493,120 barrels.

Q. 493,120 barrels. To what date is that?

A. January 1, 1940.

Q. 493,120. Have you calculated what per cent that is of the total amount of oil produced from the East Texas Field to that same date?

[fol. 323] A. In percentage, it .0340594.

Mr. Hart: Would you mind giving that again, please, sir.

A. In percentage it is .0340594.

By Mr. Moody:

Q. Now then, have you calculated that number of acre-feet of oil bearing sands under the Rowan & Nichols Todd "A" lease?

A. Yes, sir, I have that. According to the Railroad Commission's sand thickness map——

Q. Isn't it shown here on this schedule—2627?

A. 2627 is correct.

Q. Have you calculated what percent of the—is it on the Railroad Commission map, is it different from the 2627?

A. Yes, sir, slightly different. On the Railroad Commission map it is 2657.

Q. The Railroad Commission is 2657?

A. Yes, sir.

Q. And your figures on it are 2627.

A. Yes, sir.

Q. The Railroad Commission gave you 30 acre-feet more oil sand than you figured.

A. My engineer figured it, slightly less than that.

Q. Have you calculated what percent of the total acre-feet of oil producing sand in the entire sand is under the Rowan & Nichols Todd "A" lease? What I am getting at is what percent of the total number of acre-feet of oil bearing sand in the field.

A. What the—on a percentage basis?

Q. Yes, sir, is under the Rowan & Nichols Todd "A" lease.

A. .05355.

[fol. 324] Q. Have you figures that—is that based on the Railroad Commission's 2657 or on your figure of 2627?

A. 2657.

Q. And that is in percent?

A. Yes, sir, percent.

Q. Then, forgetting the last figures, you have .05 or 1% of the net oil sand in the field and have produced to date .03 of 1% of the amount of oil produced in the field?

A. That is correct.

Q. Mr. Rowan have you the—the present order, I believe, allows about 690 or 691,000 barrels of oil to be produced daily from the East Texas Field for four days a week.

A. 690,000, yes, sir.

Q. Have you calculated that on the, averaged it out to determine—for the month of February, the month of 29 days, how much that would average per day?

A. On the basis of February, with 12 shutdown days, 17 producing days, it would average 404,483 a day.

Q. What does that make the average daily production from Rowan & Nichols Todd "A" lease amount to for February, 29 days?

A. For the month of February, it amounts to 152.74 barrels per day over the 29 day period.

Q. Now, have you figured what fractional part of that daily field allowable, so averaged, Rowan & Nichols Oil Company is allowed to produce from its Todd "A" lease?

A. The fractional part of 690,000 is 37—a little better than 37/10,000ths.

Q. The Rowan & Nichols Todd "A" lease produces 37/10,000ths of the field allowable?

A. That is correct.

[fol. 325] Q. That is, as against .05% of the productive sand in the field?

A. Yes, sir.

Q. On that basis of proration, what is your opinion with respect to whether or not Rowan & Nichols Oil Company's lease is being drained to contribute to the production of other leases that have a larger production per day per 100 acre-feet of sand?

A. I think there is no question about that, that it is being drained.

Q. Is that, or not, the necessary effect of the present order of the Railroad Commission?

A. Yes, sir, it is.

Q. Now—do you know how many barrels of the daily field allowable—have you calculated how many barrels of the daily field allowable is distributed among wells on the 20 barrels per day minimum?

A. 73.46%.

Q. In barrels, can you give me that?

A. 506,920.

Q. Do you know how many barrels of the daily allowable of 690,000 is allocated to the so-called marginal wells?

A. About 6,500.

Q. About how many barrels of the daily field allowable remains for distribution on the formula adopted by the Railroad Commission, not including the 20 barrels that is put into that formula?

A. Approximately 176,000 barrels.

Q. State the percentage, please, sir, of the daily field allowable that is allocated among wells on the per well [fol. 326] basis of 20 barrels to the well.

A. It is 73.46%.

Q. What percent of the daily field allowable is allocated to the so-called marginal wells?

A. Well, it is less than 1%.

Q. About .95 of 1%.

A. About .95 of 1%.

Q. What percentage of the daily field allowable is allocated among wells on the formula that the Railroad Commission has prescribed of acreage times bottom hole pressure times potential over the total of those factors, those same factors, for the entire field?

A. It is 25.58%.

Q. On your lease, on the Todd "A" lease, how much of the daily allowable is allocated to that lease by the application of the formula, not including the 20 barrel minimum per day?

A. On the percentage basis or——

Q. No, on the barrelage basis.

A. At 20 barrels?

Q. Now, the acreage—on a percentage basis, how much of the proratable oil under the present order, and by proratable oil, I mean 176,522 barrels that is distributed among wells on the formula basis, what fractional part of the proratable oil is allocated to this lease on the formula basis?

A. It is 68/10,000ths part.

Q. That is 68/——

A. 68/10,000ths part. It is .00068.

Q. Isn't that 68/100,000ths?

A. 68/100,000ths.

[fol. 327] Q. Have you calculated how much of the proratable oil under that order that was in force in June of last year, that order involved in the prior Rowan & Nichols case, have you calculated how much of the proratable oil

under that order was allowed to this Todd "A" lease over and above the 20 barrels per well?

A. That is 2/1,000ths part.

Q. In other words, under the order that was involved in the prior Rowan & Nichols case, where there were 7,000 barrels of proratable oil, you got more proratable oil under that formula to this lease than you do under the present formula?

A. On a percentage basis, yes, sir.

Q. Mr. Rowan, have you undertaken to make figures—first, I will ask you this. Do you recall what the field allowable was under the proration order in effect in the first Rowan & Nichols case, last November?

A. 527,000 barrels.

Q. Have you undertaken to make figures based on that field allowable of 527,000 barrels, with 7,000 barrels of it, or rather, about 515,000 barrels of it taken up on a per well basis; of that 7,000 barrels allocated on the basis of 2.32% of the potential, and determined if this field had now 522,000 barrel allowable, as it had then, instead of the present 690,000 barrel allowable, have you undertaken to figure out how much oil the Rowen & Nichols Todd "A" lease would get then because of the then field allowable of 527,000 barrels, 515,000 of it being allocated on the formula of the Railroad Commission, excepting the formula by the 20 barrel minimum?

A. Yes, sir.

[fol. 328] Q. What are the facts?

A. If you take the present formula and reduce the field allowable back down to 522,000 barrels, and allocate 20 barrels of that to each well, you have about 7,000 barrels left, which is allocated under this formula, but then we would get on the Todd "A" lease a total of 4.68 barrels on the 7 wells. We would get .699 barrels per well.

Q. All right. How much did you get under the old order?

A. We got 14 barrels under the old order, slightly over 14.

Q. If you will apply that formula to the facts that existed under the old order, instead of getting for this lease 14 barrels of prorated oil, you would only get——

A. 4.68

Q. 4.68 barrels.

A. That is right.

Q. Mr. Rowan, from your experience as a practical oil operator and from your study of the facts and figures and application of this order to Rowan & Nichols, Todd "A", lease, in your opinion, will the enforcement of the present form of proration as provided in that order of January 24, 1940, will that permit Rowan & Nichols Oil Company to produce from its Todd "A" lease during the life of the field the equivalent of the recoverable oil now under that lease?

A. No, sir, I don't think it will.

Q. Do you think that presently, I mean from day to day, now, as that order is being enforced, and controlling the production from the Todd "A" lease, do you think it is from day to day preventing the Rowan & Nichols Company from producing oil from that lease in proper proportion to that allowed to be produced in the field?

[fol. 329] A. Yes, sir, I do.

Q. The Railroad Commission is now enforcing the order against the Rowan & Nichols Todd "A" lease?

A. Yes, sir.

Q. And it is being operated in conformity with the order of January 24, 1940?

A. That is correct.

Q. Take the witness—Mr. Rowan—Your Honor, it is suggested I ask another question. You say you have had experience in operating oil wells?

A. Yes, sir, I have.

Q. Some of your own, and some of other people's?

A. Yes, sir.

Q. Are you familiar with the cost of operating flowing wells, and the cost of operating pumping wells in the East Texas Oil Field?

A. I am familiar with the cost of operating pumping wells over there, and I am familiar with what it ought to cost to operate a pumping well, yes, sir. I think I could say.

Q. In your opinion, can a pumping well in the East Texas Field be operated on an allowable of five barrels a day, and a profit be made on the operation?

A. Yes, sir, it can.

Q. Have you undertaken to calculate with the values of the oil, the cost of operation, the amount of taxes, the expenses, the royalty that would accrue on such an operation and determined that on five barrels a well can be pumped at

a profit, five barrels a day, a well can be pumped at a profit in the East Texas Field?

A. Yes, sir, I have.

[fol. 330] Q. By the way, what is the present reasonable market value of oil in the East Texas Field?

A. $1.10 a barrel.

Q. Now then, along that same line, do you know whether or not in various fields in this state wells are being operated on an allowable of less than five barrels, where the conditions are comparable to the conditions in the East Texas Field?

A. Yes, sir, they are.

Mr. Hart: We wish to object to that, unless there is some proof about what fields they are talking about, and some proof that conditions are comparable.

Judge Sibley: Hadn't we better stick to this field?

Mr. Moody: Perhaps we had better.

Q. Do you know whether or not wells are now being operated in the East Texas Field that are producing less than five barrels of oil a day?

A. I know some that are producing five barrels a day.

Q. And they are operating?

A. Yes, sir.

Q. All right.

Cross examination.

Questions by Mr. Baker:

Q. Mr. Rowan, isn't it a fact that there are a number of wells in the East Texas Field which have been operated over a considerable period of time, pumping wells, producing less than five barrels a day?

A. According to the Railroad—according to the Railroad Commission schedule, yes, sir.

[fol. 331] Q. They have been submitted, up to this order, to the shut-down, along with other wells, haven't they?

A. That is correct.

Cross examination.

Questions by Mr. Fischer:

Q. Now, what do you mean when you say they operate a well on five barrels a day. Do you mean five barrels

will pay the pumper, pay the expenses of pumping and taxes? Is that what you mean?

A. That is correct.

Q. Well, would five barrels a day return you the investment that you have got to pay for your lease, the cost of drilling the well, return your investment with interest on your investment, and your upkeep and your taxes?

A. I didn't say that, Mr. Fischer.

Q. Well, all right. You take an oil well—you dig an oil well, and you figure on getting back your investment, don't you?

A. I do when I drill one. I don't always do it, though.

Q. We are talking about one that is going to get it back. If you drill an oil well you figure on getting back your cost of your lease to start with, don't you?

A. If I drill it, yes, sir.

Q. And the cost of your development, and your digging the well, and your pump and equipment?

A. Yes, sir.

Q. You also figure on a reasonable interest return on your investment?

A. Yes, sir.

Q. You figure it about 10% in the oil business, don't [fol. 332] you, that is reasonable?

A. I like to make that. I haven't been able to do it so far.

Q. Don't you figure that is a reasonable return on your investment?

A. I would say it would be mighty nice, if they would let me make it.

Q. You figure to get a return back, and interest on your investment?

A. Yes, sir.

Q. And then you have to pay the expenses of your operation in addition to your capital investment?

A. Yes, sir.

Q. Did you ever figure how many barrels it would take to get your money back on that basis?

A. I know how many barrels it would take to get my money back.

Q. How many barrels a day would it take in the East Texas Field in the fairway to get your money back?

A. I never figured that.

Q. All right. You figured five barrels a day, how much it would cost to pump a well?

A. That is correct. I think you can make a profit on the five barrels a day, and I wouldn't say that would pay his investment back in any reasonable length of time, but if his investment is paid back, and he has got the lease paid for, he can continue to operate the well on five barrels a day, and make a reasonable profit.

Q. You think if he had the lease paid for then, and the development paid for, and the equipment paid for, you can take a lease and operate it on five barrels a day and make a reasonable profit?

[fol. 333] A. Yes, sir.

Q. How much profit do you think he could make?

A. He could make from $75 to $100 a month.

Q. Seventy-five to $100 a month on that basis?

A. Yes, sir.

Q. On that profit, did you ever figure how many years it would take to return his investment with a reasonable profit on his investment?

A. No, sir.

Q. Never did. All right. Just a minute here, I want to look at a note. Now, your leases over there in what you call the fairway.

A. Yes, sir.

Q. Does the oil migrate from west over to your lease?

A. I guess it does, yes, sir.

Q. And you are just like me and the Humble, aren't you, with your lease?

A. I don't know how you and the humble are, I am trying to run my own business.

Q. Have you got as much oil under your lease today as you had when you started nine years ago?

A. You mean, oil in place?

Q. Yes, sir,

A. Yes, sir.

Q. You have?

A. Yes, sir.

Q. And you have taken out four hundred and some thousand barrels?

A. Yes, sir.

Q. Out of that lease with 7 wells on it?

A. Yes, sir.

[fol. 334] Q. And you have still got as much as you started with?

A. Got as much oil in place, yes, sir,

Q. And you say you will be discriminated against?
A. Yes, sir.
Q. That is all.

Mr. Moody: Mr. Rowan——
Mr. Hart: Do I get a chance at cross examination?
Mr. Moody: I beg your pardon.

Cross-examination.

Questions by Mr. Hart:

Q. Mr. Rowan, how much were you permitted to produce under the old proration order, that is, the orders in effect in June, 1939, on your Todd "A" lease?
A. It was slightly over 22 barrels a day, I believe, Mr. Hart.
Q. All right, sir. Under your present—under the present schedule you are permitted to produce about 37 barrels a day?
A. It averages out about 37 barrels.
Q. That is an increase of approximately 70%, is it not, in the allowables to your wells between—in the new schedule over the old schedule?
A. That is about right. I haven't figured it, but that is about right.
Q. There was a total increase in the field allowable between the old schedule and the new schedule of only about 30%, wasn't there?
A. That is about right.
Q. And your lease got an increase of about 70%?
A. That is correct.
[fol. 335] Q. So, all of this new proratable oil put into the order by the new order of the Commission went to, almost altogether, to leases like yours in the middle of the field, with thick sands, rather than to the leases on the edges of the field?
A. It went to all of the leases and all of the wells in the field, but the leases in the middle of the field, I think, profited by it more than the leases on the edges.
Q. Now, under the old schedule, you got on your lease about 14 barrels of proratable oil, didn't you?
A. That is correct.
Q. All right, under the new schedule you get about 120 barrels of proratable oil, isn't that right?
A. That is correct.

Q. You get about how many times as much proratable oil under the new schedule as you got under the old schedule?

A. It would be 14 into 120. It would be about 9 times.

Mr. Moody: Eight times.

Mr. Hart: You get eight times as much proratable oil under the new schedule as you got under the old schedule, is that right?

A. That is right.

By Mr. Hart:

Q. You gave some figures here about the percentage of proratable oil you got under the old schedule, and under the new schedule. You don't really contend that gives a fair picture of the relative fairness of the two orders, do you now, Mr. Rowan?

A. No, sir. It shows this, that you raise your allowable, and if you reduce the allowable back down, and take your present formula and use it, under a 522,000 allowable, we would be worse off than we were under the old order. That is all that it shows.

[fol. 336] Q. The reason for that is, isn't it, that under the old order, the only factor that was considered in allocating the proratable oil, was the potential, and under the new order, in addition to potential, they consider sand thickness, and acreage and bottom hole pressure, and when you consider those additional factors, your percentage of proratable oil is cut down.

A. I guess so.

Q. If you consider potential alone, you would have a little more than that?

A. Yes, sir.

Q. You don't contend that sand thickness and bottom hole pressure and average acreage are not proper factors to go into the proration schedule, do you?

A. No, sir, I don't. I testified in the other suit I thought they were proper factors.

Q. The cut-down in the percentage is due to the fact that the Commission has added some new factors which you say are proper, and in addition, has raised the top allowable, so that you have got about eight times as much top allowable, and other people have got some proratable oil?

A. Not eight times the top allowable.

Q. You get eight times the proratable oil you used to get?

A. Yes, sir, that is right.

Q. I believe you gave the percentage of the acre-feet of sand that your lease now has as compared with the total number of acre-feet of sand now in the field?

A. Yes, sir, I used the Railroad Commission figures.

Q. What do you mean, you used the Railroad Commission figures? The Railroad Commission figures are just origi-
[fol. 337] nal acre-feet of sand, aren't they?

A. I imagine they are.

Q. You stated, as I understand it, a certain percent of the per acre-feet of sand in the field?

A. No, I said a ratio of what the Railroad Commission gave us on our Todd "A" lease to what they gave the total field.

Q. Is a certain figure?

A. Yes, sir.

Q. The Railroad Commission figure, as shown on that map, is original sand thickness, isn't it?

A. I believe it is, yes sir.

Q. Do you know what the figure is, or do you have any estimate yourself of the present number of acre-feet of sand in the field?

A. I don't have, myself. My engineer may have. He is going to follow me on the witness stand, Mr. Back. He may have that figure for you.

Q. I don't want to ask you something you don't know.

A. I don't know.

Q. This figure you gave of percentage of acre-feet, whatever you may have said at the time Governor Moody was asking you, was intended to be a percentage of acre-feet of sand in your lease, as compared with the original number of acre-feet of sand in the whole field.

A. In the field. If the Railroad Commission's figures are based on the original, yes, sir.

Q. You have the same number of acre-feet of sand under that lease now that you had when the field was first opened, don't you?

A. That is correct.

[fol. 338] Q. There hasn't been any depletion at all in your lease, so far as the number of acre-feet of oil saturated sand is concerned?

A. No, sir.

Q. I believe that is all.

Mr. Moody: Mr. Rowan,——

Mr. Hart: May I ask one question I forgot?

Q. In this schedule you introduced showing certain leases which you say are generally in an eastward direction from your lease, did you include all of the leases between your lease and the eastern edge of the field in that?

A. No, sir, we did not.

Q. Do you know what percentage of the acreage between your lease, say, and a strip the same width as your lease, to the eastward edge of the field is included in that schedule?

A. Those leases do not necessarily lie in a direct easterly direction. They may lie slightly northeast or southeast.

Q. Mr. Rowan, your Todd "A" lease——

A. And they represent a small percentage.

Q. Only a small percentage?

A. Yes, sir.

Q. Your Todd "A" lease is drilled to what density?

A. Well to 4.03 acres.

Q. And what is the average density of the drilling in the field?

A. I believe it is about one well to five acres.

Q. There has been some testimony here about one well to 5.8 acres?

A. I believe that is right.

Mr. Moody: 5.17.

[fol. 339] A. 5.17. I think that is right.

By Mr. Hart:

Q. You are more densely drilled than the field as a whole?

A. Yes, sir.

Q. Do you know what the density of the section of the field your lease is in is? The density of drilling, is it about the same as the average density of the field, or somewhat less than that?

A. I don't know.

Q. You don't know?

A. No, sir.

Q. Mr. Rowan, do you have available completion dates on your wells on the Todd "A" lease?

A. Yes, sir, I have them.

Q. Do you have them stated there on a sheet of paper that you could just furnish us?

A. Yes, sir, I have them right here. I will hand them
you.
Q. Well, this shows that your well No. 1 was completed
July 22, 1931, and Well No. 7, was completed on August
, 1934. In other words, about five and a half years ago,
hy, your lease, your Todd "A" lease, was already more
ensely drilled than the field is even today?
A. Yes, sir.
Q. Isn't that correct?
A. Yes, sir.
Q. You are more densely drilled—you were more densely
rilled when you drilled those wells than the average of
e area surrounding you, and the average of the field?
A. Yes, sir.
ol. 340] Q. You are still more densely drilled than the
verage of the area surrounding you?
A. I believe immediately surrounding us we are maybe
little bit denser, than the area immediately surrounding
s.
Q. Do you know how many barrels per acre your Todd
A" lease has produced to date?
A. Yes, sir.
Q. How many barrels per acre?
A. It is a little over 17,000. I have the exact figure here.
is 17,456 barrels.
Q. Do you know what the average production per acre for
e field up to the present time is?
A. I could figure it. I haven't ever figured it, no, sir.
Q. It is about seven or eight thousand barrels, isn't it?
A. I expect that is about right, Mr. Hart.
Q. In other words, you have produced well over twice
much per acre from your Todd "A" lease as the average
the field, haven't you?
A. Yes, sir.
Q. Up to the present time?
A. Yes, sir.
Q. And you have still got the same number of acre-feet
sand under that oil lease as was originally there?
A. That is correct.
Q. Do you know how many of your wells on your Todd
A" lease were drilled as exceptions to Rule 37?
A. I would say all but the first two.
Q. All but the first two. Five out of the seven wells
ere drilled as exceptions to Rule 37?
A. Yes, sir.

[fol. 341] Q. You drilled those voluntarily, didn't you?

A. Yes, sir.

Q. You asked the permission for permits, and they granted them?

A. Yes, sir.

Q. And you thought they were reasonably necessary when you drilled them, didn't you?

A. Yes, sir.

Q. That is all.

Redirect examination.

By Mr. Moody:

Q. Mr. Rowan, the production per acre that you stated of 17,456 barrels per acre, that is based on surface acreage, is it not?

A. Yes, sir, surface acreage.

Q. Have you calculated the number of barrels recovered per 100 acre-feet of oil sands under that lease?

A. No, sir, I haven't.

Q. And if you have got 28 acres, and you have got 2627—2637 acre-feet of sand.

A. 2627.

Q. It would be about 1/10th, wouldn't it, of the 17,456, or about 1,745 barrels per 100 acre-feet?

A. That is right.

Q. It would be somewhere about 1/10th as much, since an acre-foot of sand is about ten times the surface acreage?

A. Yes, that is correct.

Q. Mr. Rowan, you know, do you not, or it is a generally conceded fact, is it not, among all people who have studied the field and scientists that have spoken of it, that over on the east and over on the west the sand is very much [fol. 342] thinner than it is in the fairway?

A. Yes, sir.

Q. In undertaking to say how many barrels of oil you have produced per surface acre, does that give any proper appraisal of the amount you may have produced, as compared with what someone may have produced in another part of the field?

A. I don't think so.

Q. Is that true because of the larger storage and reserves of oil under your lease than other places where the sand is thinner and the pressures are lower?

A. That is correct.

Q. What was the date there that you said the first well was completed on your lease?

A. About the middle of 1931.

Q. And—may I see that, Mr. Hart?

Mr. Hart: Yes, sir.

By Mr. Moody:

Q. And the last one was completed, according to this schedule here, in August, 1934.

A. That is right.

Q. In your opinion do you have enough wells on that lease now under any proper or fair plan of proration to produce all of the recoverable oil under that tract?

A. Yes, sir, I think we have more than enough.

Q. You were asked if you had as much oil under the lease now as you had to start with, and you said oil in place. Do you distinguish between oil in place and recoverable oil?

A. Yes, sir.

Q. Why do you distinguish between oil in place and recoverable oil?

A. Oil in place is the amount of oil you have in the [fol. 343] reservoir, and recoverable oil is the amount of oil you anticipate you will recover.

Q. Do you think you have under your lease now, forming as it does, a part of the East Texas Field, as much recoverable oil as the amount of recoverable oil originally under that lease?

A. No, sir, I do not.

Q. Explain to the Court why that is true.

A. Because of the fact that the water has encroached to the west, I mean to the east, and is continuing to migrate or go to the eastward and upward, and the time element is running against us all of the time. We have to take our oil out, or we won't recover it, before it is drowned out by water, and furthermore, by the fact that the pressures have declined.

Q. Is the movement of that water to the upward position, and eastward, is that pushing oil on beyond you, further to the east?

A. Yes, sir.

Q. Does the—has the production of oil in that field reduced pressures over there?

A. Yes, sir, it has.

Q. Do you know how much the pressures have been reduced on your lease since the field was opened?

A. They were originally about 1,600 pounds, and they are now 1,115. That is bottom hole pressure.

Q. Does the bottom hole pressure contribute to the amount of recoverable oil that exists in a field?

A. I think it does, yes, sir.

Q. Now then, if they have taken out,—if, say, 30% of [fol. 344] the oil that was originally in the field has been already produced, then do you think that you and Mr. Fischer are in as good a fix as you were when you started, although you may have under your lease as much oil as you had when you started?

A. No, sir, I don't.

Q. You think the recoverable oil is less?

A. Yes, sir.

Q. You were asked some questions here about a 70 per cent increase in your allowable, and that the amount of proratable oil that you get under this order is about eight or nine times as much as it was under the 522,000 barrel allowable?

A. Yes, sir, that is correct.

Q. If you put the factor of the potential in, as was in force under the old order, with a 20 barrel minimum, and distribute the balance above the 20 barrel minimum on a potential factor, as was the case under the old order, do you think you would be getting more than you do under this order?

A. Applied to 690,000?

Q. Yes.

A. Yes, sir, I probably would. I haven't figured it, but I probably would.

Q. So far as the increase, you have—you were getting under the old order 22 barrels per well, about?

A. Yes, sir.

Q. An average of about 37 barrels per well, or 15 barrels more under this order?

A. That is correct.

[fol. 345] Q. But they are producing from the field approximately how many more barrels per day?

A. 170,000.

Q. About 170,000 more barrels per day?

A. Yes, sir.

Q. Now, then, Mr. Rowan, do you think, or can any—can this formula that the Railroad Commission has now, as long as it includes a minimum of 20 barrels per well, can that ever operate to let you produce in proportion to the oil you have along with other persons in the field, or daily produce that per cent of the daily field allowable that the reserves under your lease bear to the total reserves in the field?

A. No, sir, it won't do it.

Q. You were asked some questions about paying interest on an investment. You say that you think you could operate on 5 barrels a day. You could operate a pumping well on 5 barrels a day and make a profit of some—how much was it?

A. I said from seventy-five to a hundred dollars.

Q. Seventy five to a hundred dollars a month?

A. Yes, sir.

Q. That would be from nine hundred to twelve hundred dollars a year?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. How much does it cost to drill a well over there and equip it?

A. Drill and equip it for pumping?

Q. Yes, sir.

[fol. 346] A. It costs about $12,500.

Q. Now, then, the pumping wells, principally, where are they located in the East Texas field?

A. They are located on the extreme east edge and the extreme west edge.

Q. Have you been pretty familiar with the drilling going on in that field over the last two years?

A. Yes, sir.

Q. What are the facts with respect to whether or not substantially all of the present pumping wells in the East Texas oil field have been completed more than two years?

A. I think they have, yes, sir.

Q. Under the allowable that they have been receiving in the East Texas field over the last two years, would a pumping well pay out in two years' time?

A. It would pay out, yes, sir.

Q. So, if these pumping wells have paid out, can they be operated and earn a substantial interest on the investment at 5 barrels to the well?

A. They can, yes, sir.

Q. Mr. Fischer has asked you about earning back the cost of the drilling and equipping on the basis of 5 barrels to the well, and asked you if you meant you could pay the drilling costs and—I mean the proper and operating expenses?

A. Yes, sir.

Q. But do you mean to limit your—I understood you to say yes. Do you mean to limit it to that, or do you mean at a profit of $900 to $1200, as you stated a moment ago?

A. As I understand your question, did I mean that you [fol. 347] could make a profit over and above all of that expense?

Q. Yes.

A. Yes, you could make a profit over and above that expense.

Q. So, if I understood you to tell Mr. Fischer, you could just pay your operating expenses, I misunderstood you?

A. Yes, sir.

Q. Have you been familiar, or have you kept informed on the various orders that the Railroad Commission has had in force in the East Texas field over the past six or eight years?

A. Yes, sir.

Q. And know how the field has been prorated?

A. Yes, sir.

Q. Do you remember when the Railroad Commission started the closing in the field for a certain number of days each week?

A. I believe it has been in the last two years, Governor Moody. I can't give you the exact date.

Q. Was that order—was that shutting in of the field, was that made to apply up to January 24, 1940, was that made to apply as well to pumping wells as to flowing wells?

A. Yes, sir, it was.

Q. Was it made to apply as well to wells that produced less than 20 barrels as it was to wells that produced in excess of 20 barrels?

A. Yes, sir, it was.

Q. Up until the order of January 24, 1940, became effective, did you ever know of the Railroad Commission ex-

cepting from the shutdown orders wells in the East Texas field that flowed—that would make less than 20 barrels of [fol. 348] oil per day on the pump or off of the pump?

A. They might have given some exceptions on the west side, but generally speaking, the order applied to the wells, and where they gave an exception, I think they limited them to produce five-sevenths on a seven-day basis.

Q. If they did except them, they produced in seven days what their allowable would be for five?

A. Yes, sir.

Q. In September of the past year wasn't the entire field shut in for a couple of weeks' time, August or September?

A. August or September, yes, sir.

Q. Following the granting of the tempotary injunction in the Humble case?

A. Shut in for two weeks, yes, sir.

Q. At other times, the whole field has been shut in for a week or two at a time, has it not?

A. Yes, sir, it has.

Q. These shutdown periods, Mr. Rowan, when the field isn't allowed to produce, do those shutdown periods have the effect or not to cause the oil to move to the places, into the places where some dense drilling or disproportionate taking of the production of oil, perhaps, have been reduced, so that those parts are re-charged with oil from the more productive portions of the field?

A. I don't think there is any question about it. I think it does.

Q. I believe that is all.

[fol. 349] Recross-examination.

Questions by Mr. Hart:

Q. Mr. Rowan, you talked to—made a distinction between recoverable oil and oil in place. You spoke of, you said your recoverable oil wasn't as much because the water has encroached under the west; the water hasn't encroached under your lease, has it?

A. No, sir.

Q. And all of the oil that you have taken from your wells has been replaced by oil from somewhere else?

A. Yes, sir.

Q. So, you have got as much oil under your lease as you ever had?

A. Yes, sir.

Q. When you talked about recoverable oil and encroachment of water to the west, you mean there is less oil to the west that might be pushed in under your lease to take the place of the oil you produce?

A. Yes, sir.

Q. Then, you and Mr. Fischer are in a worse position now because there is less oil to the west that can be pushed in under your leases?

A. Yes, sir.

Q. You don't mean you have got any less under your own?

A. No, sir, but I mean that unless I am permitted to produce it before the water does drown my lease out, I will lose that amount of oil that I never will be able to recover. I have got to be permitted to produce it currently and before the water drowns my lease out, or else I will never get it. [fol. 350] Q. All right. Do you own any—does your company own any leases in the East Texas field that have any pumping wells on them?

A. No, sir.

Q. Has it ever owned any leases in the East Texas field with pumping wells on them?

A. No, sir.

Q. You don't have any actual experience with the operation of pumping wells and how much it costs?

A. Not in East Texas. I have had with Woodbine production.

Q. I am talking about East Texas.

A. No, not in East Texas.

Q. Did you get your information about what it would cost to operate pumping wells from the Humble, or who?

A. No, I didn't get it from the Humble. I got it from my experience as an oil man over sixteen years, pumping wells in the Woodbine sands along the Mexia fault lines, and other fields.

Q. You are basing your testimony on your experience in other fields?

A. Yes, sir.

Mr. Hart: That is all.

Redirect examination.

Questions by Mr. Moody:

Q. Mr. Rowan, does Rowan & Nichols Oil Company own any leases in the East Texas field other than Rowan & Nichols Todd "A" lease and Rowan & Nichols Todd "B" lease in the Castleberry Survey?

A. No, sir.

Q. The Todd "B" lease, not involved in this suit, is it [fol. 351] affected by this order in proportion to its acre-feet of sand about the same as the Todd "A" lease involved in this suit?

A. Yes, sir, it is.

Q. That is all.

Judge Sibley: We will take a recess for five minutes.

(Thereupon, court was recessed at 3:30 P. M. until 3:35 P. M., at which time the following proceedings were had:)

Recross-examination.

Questions by Mr. Hart:

Q. Mr. Rowan, when you say five barrels per day on these pumping wells, do you mean five barrels for thirty days a month?

A. Yes, sir, that was my computation.

Q. Well, now, these non-marginal wells don't get to produce under the present order but seventeen days out of the twenty-nine days in February, do they?

A. I assumed those would be flowing wells. And, of course, your lifting costs would be a lot cheaper on a flowing well than a pumping well.

Q. Does this five barrels per day you speak of that you could operate a well with profit, is that a flowing well?

A. No, a pumping well.

Q. Now, the non-marginal pumping wells under the Railroad Commission orders shut down twelve days in the month of February, don't they?

A. I imagine so.

Q. They are allowed to produce only seventeen days?

[fol. 352] A. Yes, sir.

Q. Well, five barrels a day for seventeen days would mean about how much income from that well during that month?

A. It would be about $115.00.

Q. Five times seventeen. It would be about five dollars a day—or what do you figure the price of the oil would be?

A. $1.10. It would be $5.50 a day.

Q. Times seventeen would be how much? It would be about $95.00 a month, wouldn't it?

A. Yes, sir.

Q. You don't mean to say that on $95.00 a month you could pay all of those expenses of operating and labor and still have $75.00 to $100.00 profit, do you?

A. No, sir.

Redirect examination.

Questions by Mr. Moody:

Q. There is not a lot of expense to operating a flowing well, is there?

A. No, sir.

Q. You just have to have a man to go open a cock and let it flow and then go back and turn it off, isn't that about all there is?

A. That is correct. The expense is the tax, gross production tax, and that small amount of labor.

(Witness excused.)

Mr. Moody: In connection with the examination of the witness just now Mr. Hart used the term marginal well. Mr. Hart and I may have some quarrel about what a [fol. 353] marginal well means, and I wonder if it wouldn't be agreeable with Mr. Hart to clear up what he means by the term marginal as he uses it in his examination.

Mr. Hart: I mean the statutory marginal well. That is, a pumping well which is incapable of producing more than twenty barrels per day over an average for the preceding thirty days.

Mr. Moody: I am, of course, in this agreement with him as to what the statutory definition of a marginal well is.

Judge Sibley: That is the statute.

Mr. Moody: I think so, but I want to point out to your Honor—I think it is clear what he means as he uses that term. I have said so-called marginal wells. My contention is it a well producing less, in the East Texas field, than twenty barrels, twenty barrels or less per day, which will be damaged or caused to be prematurely abandoned by the artificial curtailing of its production, or as to which an artificial reduction or curtailment of its production will lead to the loss of oil ultimately recovered from it.

Judge Sibley: That is the general definition the statute first made?

Mr. Moody: Yes, sir.

Judge McMillan: Hasn't everybody agreed that the marginal well is a small factor over there? It is less than one per cent?

Mr. Moody: I think so.

Judge McMillan: It ought not to dominate the production of that field.

[fol. 354] Mr. Moody: No. I think it will only arise if an effort is made to justify the twenty barrel minimum allowed to all wells because of the marginal statute.

Mr. Hart: I want to make it clear to the court that the marginal wells are in a separate class by themselves, a negligible number and negligible in amount of production; that the twenty barrel per day base allowable is not based on the statute, but it is based on a finding by the Commission that that is a reasonable minimum below which they cannot safely reduce those wells without causing waste and confiscation.

Judge Allred: You want to make that independently? That is not dependent on the statute at all.

Mr. Hart: No, sir, it is not dependent.

Mr. Moody: As I understand it, the Attorney General's contention is that that is to be implied from the order. I don't think there is any express statement in the order or elsewhere of anything to that effect.

Judge Sibley: The order will speak for itself.

Mr. Moody: Yes, sir.

E. O. Buck, a witness for the complainant Rowan & Nichols Oil Company, having been previously duly sworn, testified as follows:

Direct examination.

Questions by Mr. Moody:

Q. State your name, please.
A. E. O. Buck.
Q. Where do you live, Mr. Buck?
[fol. 355] A. Houston, Texas.
Q. What business are you engaged in?
A. I am a consulting petroleum engineer and geologist.
Q. State your educational training, please, that goes to form a part of your equipment as an engineer and geologist.
A. I am a graduate of Texas A & M College, class of 1926, with a major in geology and a minor in petroleum engineering.
Q. Since graduating from the Texas Agricultural & Mechanical College state the experience you have had or where you have had experience working as a geologist and petroleum engineer?
A. I was employed by the Gulf Petroleum Corporation in June of 1926, and was with them until June, 1931. During that time I worked in the Laredo district, North Central Texas district, West Texas and the Panhandle districts for the Gulf Company. After leaving the Gulf I went to East Texas and I was there nineteen months as resident engineer for the Texas Railroad Commission. I left there in 1933, and was employed as technical adviser for the Conroe Operators Association; stayed there in that field supervising the development until 1935. Since that time I have been in the general consulting practice in Houston, Texas.
Q. For nineteen months during 1931, 1932 and 1933, I understand you were the Railroad Commission engineer in the East Texas field?
A. That is correct.
Q. At that time was that field in the process of development?
A. Yes, sir.
Q. Since 1935, during the time you have been engaged as a consulting engineer, petroleum engineer and geologist, have your employments limited your work to any one field

ol. 356] or have your employments been in various fields this state and other states?

A. Various fields in this state and other states.

Q. Now, have you made a study of the material that is vailable on the East Texas oil field?

A. Yes, sir.

Q. You have been actually in the field?

A. Yes, sir.

Q. Have you supervised some of the Railroad Commis-on's regulations in that field? Didn't you when you were onnected with the Railroad Commission?

A. Yes, sir.

Q. Made various tests in the field?

A. Yes, sir. During 1931, 1932 and 1933 I supervised umerous tests in the field, and since that time have had ccasion to evaluate and appraise numerous pieces of prop-rty there, which I have had to go back to make further vestigations and tests in the field.

Q. Have you studied logs of wells, electric logs, in the eld, sand cores, and made the various other studies that ngineers make in an effort to inform themselves about the roperties and qualities and characteristics of an oil field?

A. Yes, sir.

Q. Have you acquainted yourself with the Rowan & ichols Todd "A" lease in the Castleberry survey in the ast Texas field?

A. Yes, sir.

Q. Are you also acquainted with the Rowan & Nichols odd "B" lease, Castleberry survey, in the East Texas l field?

A. Yes, sir.

Q. Where are these two leases with respect to each other?

ol. 357] A. The two leases are located in the Castleberry urvey, on the western side of the Castleberry survey. And he Todd "A" lease is located some 1,150 feet north of he Todd "B" lease.

Q. The Todd "B" lease is the one involved in the prior owan & Nichols suit?

A. That is correct.

Q. You are acquainted with that? You testified in that it, did you not?

A. Yes, sir.

Q. Now, Mr. Buck, have you undertaken to compile figures howing the acreage of the East Texas oil field, the acre-

feet of sand in the field, the amount of oil that has been produced from the field, the amount of expected recovery from the field, the estimated amount of oil under the Rowan & Nichols Todd "A" lease, and the prospective recoveries from that lease?

A. Yes, sir, I have.

Q. In preparing or in undertaking to assemble that data or those facts, have you studied all available data bearing on the subject?

A. I have studied every bit of the data I could get hold of.

Q. Does that include what the Railroad Commission has in the way of maps and one thing and another in connection with the East Texas field?

A. Not particularly any information I was able to get from the Railroad Commission until after I had completed my survey.

Q. All right. Now, have you prepared a chart undertaking to show the results of your studies on these matters [fol. 358] that I have just asked you about?

A. Yes, sir.

Q. Is that the chart on the board over there?

A. Yes, sir, that is it.

Q. Does it truly reflect here in figures your opinion as to the facts that are purported to be represented by those figures?

A. Yes, sir.

Mr. Moody: I offer this in evidence and will prove up the various items of it.

(The above referred to chart was thereupon received in evidence and marked Complainant Rowan & Nichols Oil Company's Exhibit No. 27.)

Q. What date are these figures based on?

A. As of January 1, 1940.

Q. What do you calculate the proven acreage of the East Texas field to be?

A. 131,794 acres.

Q. What per cent of that acreage is in the Rowan & Nichols Todd "A" lease?

A. Todd "A" lease is 28.25 acres, or .0214349 per cent.

Q. What do you calculate as the total acre-feet of productive sand?

A. The total acre-feet of sand is 4,990,350.

Q. Is that net sand?

A. That is net sand.

Q. Net oil bearing sand?

A. Yes, sir.

Q. Are your figures on that entirely in accord with what you understand to be the Railroad Commission's figures on that?

A. Yes, sir. They are maybe some 30,000 feet higher.

[fol. 359] Q. Your figures are some 30,000 feet higher?

A. Yes, sir.

Q. Out of nearly 5,000,000?

A. Yes, sir.

Q. What do you calculate to be the total acre-feet of net sand under the Todd "A" lease?

A. 2,627 feet.

Q. What per cent of the total acre-feet of sand in the East Texas field is under the Rowan & Nichols lease?

A. .052642 per cent.

Q. Have you calculated the average sand thickness in the East Texas field?

A. Yes, sir.

Q. What do you figure that at?

A. 37.86 feet.

Q. Have you calculated the average sand thickness in the Rowan & Nichols lease?

A. Yes, sir, as 93 feet.

Q. How does that check with this Railroad Commission isopach map which is identified in the record as Plaintiff's Exhibit 4?

A. From the map the Commission schedule was made, and they show the sand thickness average of that lease to be 94 feet.

Q. Now, have you calculated the expected recovery per acre-foot of sand in the East Texas field?

A. Yes, sir, that is my estimation of what the average recovery will be over the life of the field.

Q. What figure is that?

A. 927.40 barrels per acre-foot.

[fol. 360] Q. In calculating that figure do you undertake to base it on just what has happened up to the present time, or project it out for the productive life of the field?

A. That is my estimation for the average recovery over the entire producing life of the field.

Q. Have you calculated from these figures the recovery expected, recoverable oil in the East Texas field?

A. Yes, sir.

Q. What figure is that? What do you figure that at?

A. 4,628,054,299 barrels.

Q. Have you calculated the expected recoverable oil originally under the Rowan & Nichols lease?

A. Yes, sir.

Q. What do you figure that at?

A. 2,434,656 barrels.

Q. Now, in what per cent of the original expected recoverable oil in the field do you estimate was under the Rowan & Nichols Todd lease?

A. .052606 per cent.

Q. How does that per cent of the recoverable oil under this Todd "A" lease compare with the per cent of acre-feet of sand under the lease?

A. That is almost the same. It is past the fourth decimal point.

Q. Now, have you calculated the production of oil from the East Texas field up to January 1, 1940?

A. Yes, sir.

Q. What do you calculate that at?

A. 1,447,821,784 barrels.

Q. In taking that figure have you undertaken to include hot oil as well as oil produced in conformity with Railroad [fol. 361] Commission orders?

A. These production figures are based on the API of production reports issued currently from month to month since the beginning of the field, and they attempted to not only count all of the allowable oil and reported oil, but it was their estimate of the excess oil that was produced in the field, so these figures based on that would include total production as near as it could be calculated.

Q. Is that, in the engineering profession and the oil business, regarded as a reliable source to secure that information from?

A. Yes, sir.

Q. Is it or not regarded as more reliable than the reports made to the Comptroller's Office for tax paying purposes?

A. I wouldn't say that in the past few years, but several years ago it was, yes, sir.

Q. Now, have you calculated the amount of oil that has been produced from the Rowan & Nichols Todd "A" lease to January 1, 1940?

A. Mr. Rowan furnished me from his office records a total production of 493,120 barrels.

Q. What per cent does the amount of oil or is the amount of oil produced from the Rowan & Nichols Todd "A" lease of the total amount of oil produced from the field?

A. .0340594 per cent.

Q. Now, then, has the Rowan & Nichols Todd "A" lease, based on that total production, been allowed to produce in relation to or in the ratio that the original expected recoverable oil under the Rowan & Nichols Todd "A" lease bore to the original expected recoverable oil under the entire field?

[fol. 362] A. No, sir, it has not.

Q. More or less?

A. Less.

Q. By what per cent?

A. Almost half.

Q. Has it been allowed to produce in the relation that the acre-feet of sand under the Rowan & Nichols lease, Todd "A" lease, bore to the total acre-feet of sand in the field?

A. No, sir, it has been producing less.

Q. Now, then, have you undertaken to estimate the remaining recoverable oil in the East Texas field?

A. Yes, sir.

Q. What do you estimate that figure at?

A. 3,180,232,515 barrels.

Q. What do you estimate to be the remaining oil under the Rowan & Nichols Todd lease?

A. 1,941,536 barrels.

Q. What relation or what proportion is the latter figure of the first?

A. That would be .0610501 per cent.

Q. Now, have you calculated the extent to which the East Texas field has been depleted?

A. Yes, sir.

Q. What do you figure that at?

A. 31.28.

Q. Have you calculated the extent to which the Rowan & Nichols Todd "A" lease has been depleted?

A. Yes, sir.

Q. What do you find that figure to be?

A. 20.25.

[fol. 363] Q. Now, then, there has been some point made here that there is as much oil in place now under this Rowan

& Nichols Todd "A" lease as there was originally in place under that lease.

A. That is correct.

Q. All right, then tell the court, explain to the court, how you figure this depletion?

A. The field has been depleted thirty per cent, and during this producing period of time Rowan & Nichols has only been permitted to recover 20.25 per cent of its production. In the meantime the field has suffered this 31.28 depletion, and the water is moving in from the west and is pushing the oil forward, and it is migrating on eastward. At this time the Rowan & Nichols lease is only serving as a storage tank until such time as the oil is taken on out by the faster rate of production that the field is getting over what Rowan & Nichols is getting, although they have as much oil now as they had originally. Under the order now existing or any order in the past never could Rowan & Nichols recover this amount of oil.

Q. You mean by this amount of oil the amount of oil originally in place under their lease?

A. That is correct.

Q. Now, if Rowan & Nichols had been allowed to produce in the same ratio that the balance of the field has been allowed to produce, based on its reserves, then Rowan & Nichols would have gotten approximately a half more oil than they have gotten, is that correct?

A. Yes, sir.

Q. That would be about 200,000 barrels more oil?

A. It has lost to date under these past and present [fol. 364] schedules 269,035 barrels.

Q. In other words, if Rowan & Nichols had produced from the reserve originally under that lease in the proportion that the balance of the field or the entire field has been allowed to produce Rowan & Nichols would have produced 200,000 barrels more?

A. 269,035 barrels.

Q. Now, then, while the amount of oil now in place under the Rowan & Nichols lease is substantially or is as much as the amount originally in place under that lease, what are the facts with respect to whether or not there is as much recoverable oil, that is, oil that Rowan & Nichols can recover, whether or not there is as much recoverable oil under the Rowan & Nichols Todd "A" lease now as there was originally under this lease?

A. Not so long as the field is produced the recoverable oil is not the same as it was originally.

Q. Now, explain to the court why, although there is as much oil in place under the Rowan & Nichols lease now as there was in place originally, explain to the court why under the present plan of proration, the system now in force, Rowan & Nichols do not have as much recoverable oil under their lease as they had originally?

A. Well, if you take the daily field production where there would be 690,000 barrels a day, or whatever the Commission elected to put as a top allowable for the field, Rowan & Nichols in producing in there would have approximately that same proportion of .037762 of the daily field allowable. It would require under the present allowable for the field 4,609 days to deplete the field, and under the same 260.6 barrels production Rowan & Nichols get it would require [fol. 365] 7,750 days for it to deplete its property, so the field has been depleted 3,000 days before Rowan & Nichols pays out.

Q. On that explanation you have explained the next two figures that appear on Plaintiff's Exhibit 27, that is, the daily rate of production is 690,000 barrels and Rowan & Nichols is daily producing 260.52 barrels or .037762 per cent of the daily allowable?

A. Yes, sir.

In other words, Rowan & Nichols Todd "A" is not allowed to produce that per cent of the daily field allowable that the oil in place under the Rowan & Nichols lease bears to the total oil, the total recoverable oil in the field, and it is not being allowed to produce in the ratio that the sand under the Rowan & Nichols lease bears to the total sand in the field, is that right?

A. That is correct.

Q. It is producing just a little more than half what its ratio would be?

A. You see, the field ratio over the Rowan & Nichols is in the order of 3.1 to 2.

Q. Now, then, under that rate of production the field would be depleted in 4,609 days, and it would take Rowan & Nichols 7,750 days to get its share of the oil?

A. That is correct.

Q. Figured in years, that is the next item on the exhibit, I believe.

A. On a 365 day year the East Texas field will be depleted in 12.62 years, while the Rowan & Nichols property would

have to produce 21.23 years to recover the recoverable oil. Taking it on a 261 day year, or Saturday and Sunday shut [fol. 366] downs, the field would be depleted in 17.66 years, but it would require Rowan & Nichols 29.69 years to recover its pro rata share of the oil.

Q. Now, then, Mr. Buck, based on your study of the East Texas field and the Rowan & Nichols lease, assuming that the present plan of proration, that is, the plan in force under the order of January 24, 1940, is continued throughout the productive life of the field, what is your opinion as to whether the Rowan & Nichols Oil Company within the productive life of the field, would recover from the Rowan & Nichols Todd "A" lease an amount of oil substantially equivalent to the amount of oil originally in place under that lease?

A. I might have got lost a little bit on that question, counsel.

Q. Well, I will state it over again: From the studies you have made of the Rowan & Nichols lease and the studies you have made of the East Texas field, assuming that the present plan of proration, that is, under the order of January 24, 1940, is continued in force during the productive life of the field, what is your opinion as to whether or not Rowan & Nichols would under such a plan of proration be able to produce from the Todd "A" lease in the productive life of the field an amount of oil substantially equivalent to the amount of recoverable oil originally in place under the Todd "A" lease?

A. He wouldn't produce that amount by some 900,000 barrels.

Q. In other words, in the life of the field Rowan & Nichols would lack 900,000 barrels of getting as much oil as there is in place under the lease, is that right?

A. Slightly in excess of that.

[fol. 367] Q. Of recoverable oil originally in place?

A. That is right.

Q. Slightly less than 900,000?

A. Slightly more.

Q. Slightly more than 900,000?

A. Yes, sir.

Q. And I believe oil is worth about $1.10 a barrel, isn't it?

A. East Texas crude is $1.10.

Q. Now, then, what will happen to prevent Rowan & Nichols producing, within the productive life of the field, under this present plan of proration, an amount of oil substantially equivalent to the amount of recoverable oil originally under the lease?

A. The Railroad Commission proration order.

Q. All right. Will the lease be drowned out by the water, in your opinion, before Rowan & Nichols gets its oil?

A. Yes, sir, the lease will be drowned out from water considerably before he would recover—oh, within 900,000 barrels of what his recoverable oil would be.

Judge Sibley: What year do you think, on the present rate of exhaustion, the water would drown out the Rowan & Nichols lease?

A. I hadn't calculated it on that basis, your Honor. I can make that calculation.

Judge Sibley: The thought I had in mind was that the western wells will get drowned out and then there will be fewer and fewer wells left to divide this top allowable among, and the individual wells will therefore have their production run up as that happens.

[fol. 368] A. Yes, sir, in that event, so long as there is any minimum given on the per well basis or seventy-five per cent of the allowable of the field allocated on the per well basis, the properties to the east of the Rowan & Nichols lease will be getting substantially more oil in their pro rata share than they participate in the field's reserve, and that ratio will stay a constant ratio.

Judge Sibley: My first question was whether or not you had considered what year, according to the way things are running, Rowan & Nichols really would lose their lease?

A. No, sir, I hadn't any time factor.

Q. Can you make that calculation?

A. I believe that I have enough information in Austin to do that, yes, sir.

Judge McMillan: You say this field will, on a 365 day basis, be depleted in twelve and a fraction years?

A. At the present rate of depletion.

Judge McMillan: Is that figuring the field generally as a whole or are there certain parts that will run on longer? Do you take an average?

A. That figure, Judge McMillan, is based entirely on 690,000 barrels a day rate, divided into the remaining recoverable oil reserve of the field. That means the field would have to produce the last day it produced 690,000 barrels, so that is for comparative purposes only. Unquestionably properties on the east side of that field will continue to produce twenty or thirty years after some of these other properties are drowned out.

Judge McMillan: But you think the Rowan & Nichols lease would certainly be gone, on this basis, within a period [fol. 369] of twelve years?

A. In twelve years if you maintain a 690,000 barrel top allowable, yes, sir, I believe it would.

Judge Allred: What do you mean by this 21.23 in the righthand column?

A. That means if he got all of his recoverable oil, Rowan & Nichols, he would have to produce 21.23 years, whereas the field would be depleted in 12.62 years.

Q. Mr. Buck, those two figures of 12.62 and 21.23 are comparative figures, as I understand you, based on the 690,000 barrels daily field allowable?

A. Yes, sir.

Q. All right, suppose that field allowable is reduced below 690,000 barrels daily, but the method of proration of their daily allowable among the wells remains the same, all those figures, while they may change, they will remain in relation the one to the other the same?

A. Yes, sir.

Q. The ratio will be the same?

A. Yes, sir, so long as the allowable is 2,527 those figures will be the same.

Q. What?

A. Twenty-five per cent on formula and seventy-five per cent per well.

Q. Whether the daily allowable is 500,000 barrels a day or a million barrels a day, if it is allocated among wells on the present formula and in the ratio of seventy-five per cent on a per well basis and twenty-five per cent on this

proration formula, why, the figures 12.62 and 21.23, while they will change, the figures that would go in there in their [fol. 370] place would be in proportion the same?

A. Yes, sir.

Q. In direct proportion?

A. Yes, sir.

Q. Now, is it your opinion, then, that before ever Rowan & Nichols Oil Company would be able to produce an amount of oil substantially equivalent to the recoverable oil under its lease, if this present plan of proration is continued, is it your opinion that the lease would be drowned out by the encroachment of water before they got the oil equal to their original recoverable oil under the land?

A. Yes, sir.

Q. After that happened what is your opinion as to whether or not there will be other leases in the eastern edge of the field producing oil?

A. Yes, sir.

Q. Explain to the court why that is.

A. The top of the Woodbine section varies in elevation from minus 3,140 feet down to 3,320 feet below sea level.

Q. Yes, sir.

A. The Rowan & Nichols lease is at minus 3,280.

Q. Is there some 45 to 60 feet more structure up-dip from the Rowan & Nichols lease to the eastern extremities of the field now, that area being 45 to 60 feet higher than the Rowan & Nichols lease would be, free from water when Rowan & Nichols was drowned out?

Judge Sibley: Are you figuring on the bottom or top of the sand?

A. Based on the top.

Q. The bottom of the sand to the east is also higher, is it not, than the top of the sand under the Rowan & Nichols lease?

[fol. 371] A. That is correct; the bottom of the sand is also higher.

Q. Will you take this pencil now and mark on this plaintiff's Exhibit 3, the Rowan and Nichols' lease—on 3 or 4, one of them,—that is the top of the sand?

A. Yes, sir.

Q. Now, where is the lease with respect to the 3200 foot contour?

A. The minus 3200 foot contour falls as indicated by the pencil.

Q. All right. Now, that map is drawn to a scale of one inch to 3,000 feet. How far east of the west edge of the Rowan and Nichols' Todd A lease is that contour?

A. Slightly in excess of 3,000 feet.

Q. Where is that minus 3160 contour?

A. The —3160 contour falls as indicated by the pencil, with the exception of a small island of 3160 that lies in between there (indicating).

Q. Now, between this lease, coming up until you get to the minus 3160 foot contour, there is a thickness of sand of 40 foot higher than the top of the sand on the Rowan and Nichols Todd A lease.

A. That is correct.

Q. That 40 feet of sand is pretty good oil sand, isn't it?

A. Yes, sir.

Q. Very prolific fields are found in less than 40 feet of sand, aren't they?

A. Yes, sir.

Q. So the water will come in and push the oil further on up the structures, and those wells will be producing oil after Rowan and Nichols lease is drowned out?

A. Yes, sir.

[fol. 372] Q. Now, Mr. Buck, under open-flow conditions which part of the East Texas field would produce the most oil or have the advantage in the production of oil?

A. Unquestionably the area of thickest sand sections.

Q. That would be in the fairway, as it is called?

A. Yes, sir.

Q. To the east and the west they would be at a disadvantage under open-flow?

A. Decidedly so.

Q. Now, what is the effect of this present plan of proration with respect to what part of the field gets to produce a greater amount of oil in proportion to the recoverable oil under that part of the field?

A. It is just the contrary. The thicker the sand, the less production you get.

Q. Leases on the east side of the field and on the west side of the field in proportion to the amount of recoverable oil under them are now producing more oil than the leases in the center of the field?

A. Yes, sir.

Q. Is that the result of this present plan of proration?

A. Yes, sir.

Q. Will that condition continue as long as that plan is in force?

A. Yes, sir.

Q. Do you know what the average amount of oil, or what is the average number of barrels of oil per hundred acre-feet of sand that is produced per day over there?

A. According to my calculations on that, at the rate of 690,000 barrels per day, the production per 100-acre feet of sand would be 13.28 barrels.

Q. That is the average?

[fol. 373] A. Yes, sir.

Q. Have you calculated the number of barrels the Rowan and Nichols Todd A lease is allowed to produce per day per hundred acre-feet of sand?

A. Yes, sir; using my basis of calculations for the field total and Rowan and Nichols total, it would be 10.11 barrels per hundred acre-feet.

Q. That would be 3.17 barrels less per day per 100-acre-feet of sand?

A. Than the average of the field.

Q. Than the average of the field?

A. Yes, sir.

Q. Are the sands under the Rowan and Nichols Plot A lease better or poorer than the average of the field?

A. In my judgment those thick sand sections areas unquestionably have the best sand conditions in the field, and should be expected to recover more oil per acre feet. However, in these calculations I have treated that section the same as I have the average recovery for the field.

Q. You mean they ought to be able to produce more—the position in the sand is such that they ought to be able to produce more on account of the quality of the sand?

A. That is correct.

Q. They have more oil under them?

A. Yes.

Q. And more sand?

A. Yes.

Q. And more bottom hole pressure?

A. No; there is some pressure west of them that is higher.

Q. They have higher potentials then?

A. That is right.

[fol. 374] Q. Have you calculated about what the recoverage will be of leases over on the east side of the field east of the Rowan and Nichols tract?

A. Yes, sir.

Q. What their recoveries will be under this present plan of proration?

A. Yes, sir; I have made some calculations.

Q. What do your calculations show?

A. We found in numerous leases that in basing recoveries on Rowan and Nichols recoveries versus these densely drilled tracts in thinner sand sections that the recovery where Rowan and Nichols only get 68 per cent of its recoverable oil, that many of those leases get recovery from 250 to as high as 22000 per cent of the amount of oil that they had originally in place, of which, of course, Rowan & Nichols is contributing its 32 per cent to.

Q. Now, based on the fact that Rowan and Nichols Todd A lease is producing at the rate of only 10.11 barrels per 100-acre-feet of sand per day, while the average of the field is 13.28 barrels per 100 acre-feet of sand; based upon the further fact that your calculations show that some leases over to the east of the Rowan and Nichols lease under this present plan of proration will produce from 250 per cent to 22,000 per cent of the amount of recoverable oil originally in place under them, what is your opinion with respect to whether or not, from day to day, the application of this proration plan to the Rowan and Nichols tract is resulting in a drainage of oil from the Rowan and Nichols tract to other tracts of land?

A. Unquestionably each day that this order stays in ef-
[fol. 375] fect that condition does exist, and the Rowan and Nichols tract is being drained as the field is being depleted.

Q. Do you think that will continue as long as that plan of proration is in effect in that field?

A. Unquestionably.

Q. If this plan of proration is continued during the producing life of the field, what per cent of the recoverable oil originally in place under the Rowan and Nichols tract do you estimate that the Rowan and Nichols Oil Company will be able to recover during the life of the field?

A. His total recovery will be somewhere in the neighborhood of 61.85 per cent of the recoverable reserves originally.

Q. That is, you mean by that he will get somewhere about 61 or 62 per cent of the amount of recoverable oil that was originally in place under his land?

A. Yes, sir.

Q. And you have taken into account not only the oil that he has produced, but that which he will produce to the end of the life of the field, if this plan of proration is kept in force?

A. Yes, sir.

Q. Do you think, Mr. Buck, that as long as the Rowan and Nichols Oil Company is required to produce daily a less per cent of the daily allowable than that per cent that its recoverable reserves bears to the reserves in the field as they originally existed that Rowan and Nichols will be constantly loosing oil and will lose oil to the end of the life of this field?

A. Yes, sir.

Q. Mr. Buck, what is your opinion as to whether or not this present plan of proration is necessary to prevent waste [fol. 376] or to contribute to waste of oil in this field?

A. In my opinion it seriously contributes to it.

Q. You mean it contributes to waste?

A. Yes, sir.

Q. Explain to the Court why you think the order does contribute to waste of oil in the field.

A. In the first place, the top allowable of 690,000 barrels per day is too high for the efficient rate of production in that field, and for that reason the Commission has to shut down the field three days a week to help build this thing back up and to keep an abnormal pressure drop from occurring in the field. Each time the field is shut down that does not necessarily mean that the 690,000 barrels of daily water moving into the field ceases. That is what helps build the pressure up that is moving the oil to the east; but it is helping to drown and flood leases to the west and in many ways creating physical waste in the field at that high top allowable, and it would be better for the field to be producing seven days a week at 405,000 barrels than at 690,000 barrels four days a week.

Q. In other words, this water comes in at the rate of 690,000 barrels a day, and it traps in oil, doesn't it?

A. That is correct.

Q. What about the present plan allowing these little tracts to produce such a large quantity of oil? What about the concentrated drilling or large withdrawals in production? Does that contribute to waste?

A. Each time you shut down the field you recharge those [fol. 377] boys' batteries over there and he gets a new lease on life.

Q. The Gladewater townsite, is that a densely drilled area?

A. Yes, sir.

Q. What about the New London area?

A. It is densely drilled too.

Q. Those other places over on plaintiff's exhibit there, on that isopach map, Humble's Exhibit No. 4, they show dense areas of drilling, don't they?

A. Yes, sir; you can see it on that particular map. The wells are a little larger than on the other exhibits, and where you have those clusters of wells—it is easy to follow.

Q. Looking at that map and looking at Plaintiff's Exhibit No. 5, which has the green showing the water drawn in along on the edge of the field, just opposite the densely drilled areas has the water moved in a little further than elsewhere on the map?

A. There is marked evidence of that up and down the field, where undoubtedly unratable withdrawals and heavy concentration of development has caused water fingerings to get quite a ways into the reservoir proper.

Q. Will this order allowing every well to have 20 barrels to start with and then adding to that by the application of the formula to the well, where wells are drilled to high density, as in the Gladewater Area and in the New London area and other places where the statements show that they drilled one well to one tenth of an acre in some places, will that excessive withdrawal from that area tend to bring the water higher in that particular part of the field?

A. Yes, sir.

[fol. 378] Q. Now, will that also take an unfair part of the daily allowable to those wells, so that the Rowan and Nichols tract will not get its fair share of the oil?

A. Yes, sir; so long as you are out of proportion as high as 75 barrels per 100 acre-feet of withdrawals in one section and another section being held from eight to ten barrels per 100 acre-feet, unquestionably that disproportion causes one to lose and the other to gain.

Q. Do they have densely drilled areas on the east side of the field?

A. Yes, sir.

Q. Is that shown on the isopach map over there?

A. Yes, sir.

Q. Plaintiff's Exhibit 4?

A. Yes, sir.

Q. The pressures over there are lower, are they not?

A. Yes, sir.

Q. Do you know at what pressure the gas passes out of solution in the oil in the East Texas Field?

A. Somewhere in the neighborhood of 750 pounds to the square inch.

Q. Does the fact that there is gas in solution in the oil in the East Texas Field add to the amount that can be recovered from the field as compared with what should be recovered if the gas was not in solution?

A. Oh, unquestionably.

Q. Will this order as it allows these high allowables in areas that are drilled to high density, will those withdrawals tend to reduce the pressures and let the gas pass out of solution and lead to a reduction in the amount of oil ultimately recovered from the field?

A. Pressure differentials will invariably exist between [fol. 379] areas of high withdrawals versus areas of low withdrawals, and if these pressure differentials are in the order to where the pressure will decline below 750 pounds, they will occur. Of course, the liberation of your dissolved gas means that your fluidity of oil is decreased or the viscosity of it is increased, and it requires considerable more pressure to move that oil in its viscuous state than in its fluid state. That ratio is in the neighborhood of about three to one in the early stages and gets as high as ten to one in the later final stages of the viscuous liquid.

Q. Now, then, Mr. Buck, what is your opinion with regard to whether or not orders can be adopted for the proration of this field that will allow to the operators in the field an opportunity to produce oil in proportion to the recoverable oil under that tract, and at the same time avoid physical waste in the field?

A. It is my belief that it can be done.

Q. You have previously suggested to the Commission and in Court, methods that could be adopted to accomplish that end, have you not?

A. Yes, sir.

Q. As long as you have any character of order that allows a flat per well allowable of 20 barrels to the well, can you have an equal opportunity among producers in the field—that is an opportunity in proportion to the reserves they have under their leases, and can you, in your opinion, prevent waste?

A. I don't believe I quite understand you.

Q. As long as you have a proration scheme or formula [fol. 380] that allows every well in the field a flat 20 barrels and then adds to it a little more—perhaps three-fourths on a per well basis, and one-fourth on some other factor—can you have equal takings as between operators in the field—takings, that is in proportion to what they have under their leases?

A. No, sir.

Q. In your opinion can you by that method of proration prevent waste in the field if you have your minimum allowable as high as 20 barrels?

A. No, sir; I don't believe you can.

Q. Does the fact that the field has not been uniformly drilled necessarily makes true the two answers that you have just given?

A. That is correct; plus the too many wells have been drilled in it.

Q. What area, in your opinion, will a well in the East Texas field effectively drain?

A. My belief is that drainage will be in the order of from 15 to 25, or maybe acres to a well.

Q. You mean by that part one well could effectively drain the recoverable oil from under 15 to 25 acres?

A. Yes, sir.

Q. Then is seven wells on the Rowan and Nichols tract ample to produce all of the recoverable oil under that tract—under fair system of proration?

A. Yes, sir.

Q. Now, Mr. Buck, suppose some of these little wells that are over in the water zone in the west edge of the field producing large quantities of water and small quantities of oil—some of these so-called marginal wells that cannot make but about an average of some 10 or 11 barrels from [fol. 381] them—some 500 odd wells—suppose those wells on the west edge were close in, would that result in a loss of the oil ultimately to be recovered from the field, in your opinion?

A. I don't think so.

Q. Why not?

A. I believe in most instances the oil would be moved up structure by the water movement there bringing it on ahead and it would be produced higher up structure. However, on numerous occasions the field has been closed in and all wells shut down, and in some of those wells, they started right up again and at approximately the same amount of oil they had before they were shut in, and we did not notice any material change in their production. In those wells oil would not have been moved up structure, but when water comes there that is all there is there anyway.

Q. Isn't it a fact that the Railroad Commission in times past has been closing all the wells in the field without regard to whether they made more or less than 20 barrels of oil?

A. Yes, sir; they shut it in tight several times.

Q. They have done that several times?

A. Since 1937, yes, sir.

Q. So far as you know, it did not hurt those wells?

A. Materially helped a bunch of them.

Q. In your opinion, did it cause the loss of any oil that would ultimately have been recovered or lead to the abandonment of any of those wells?

A. No, sir. In fact, the first shut in 1931 under martial law, that helped to recover that field considerably.

[fol. 382] Q. Now, on the west side wells that are close to the water and that are producing small quantities of oil and large quantities of water, what is your opinion as to whether or not the operation of those wells contributes to waste or prevents waste?

A. My judgment, a well of that type, the recovery of oil is of far less in value than the reservoir energy that is dissipated in the moving of all the water that is necessary to get this insignificant amount of oil, and that the reservoir is being damaged by the operation of that type of well over the value of the oil that would be recovered.

Q. Based on your experience as an engineer, do you say you have valued properties?

A. Yes, sir.

Q. Have you made studies of how much it takes to operate wells—pumping wells and flowing wells?

A. Yes, sir.

Q. Based on your study of those matters, what is your opinion as to whether a pumping well in the East Texas field can be operated on a profit at an allowable of five barrels a day?

A. That question I could not answer as a general proposition whether it could or not. I can take any specific well and tell you quickly. So many of those wells were completed with junk equipment and were poorly completed, possibly a well like that, where all of the equipment is worn out, it might have to have more than five barrels to keep it in operation; but any well properly completed can surely do it.

Q. And most of this marginal or sub-marginal wells— [fol. 383] most of them are on the west or east side of the field?

A. They are edge wells, yes, sir.

Q. Have most of those wells been drilled long enough to be paid out now on their past production?

A. I think so.

Q. By the way, this question—do you know whether or not the Commission is still granting permits to drill in the East Texas field?

A. It is my understanding that they still are.

Q. Does the granting of additional permits to drill in that field lead to a further complication of this problem of operation in the field?

A. Yes, sir; we have too many wells now.

Q. Could the recoverable oil in that field have been produced from 10,000 properly located wells?

A. Yes, sir.

Q. Could 15000 wells of that field now be closed in and the balance of the wells recover the balance of the recoverable oil in the field, can it be distributed out among the owners in the field?

A. With the provision that they be hand selected.

Q. You could pick them out?

A. Yes, sir.

Mr. Hart: Do you mean that could be done without physical waste, or as a legal method?

Mr. Moody: I am asking him about the problems of handling the field.

Q. Now, Mr. Buck, after this order as now in force and applied in the East Texas field, have you undertaken to

calculate whether or not there can be located in the field a [fol. 384] line of maximum recovery, east of which the recovery will be great, and west of which the recovery will be less than the oil originally in place?

A. Yes; I believe the best name for that would be a neutral line.

Q. Have you prepared such a map and drawn such a line?

A. Yes, sir.

Q. Explain how that map was prepared and how the location of that line is arrived at.

A. The East Texas field was outlined, a composite of three maps made, one on the top of the sand, and one on the bottom of the sand, and from that a sand thickness or isopach map made. From this map various cross sections from west to east similar to the ones introduced in court yesterday, made up of Schlumberger logs, were made. The cross section data was then platted to scale on graph paper, and subdivided into sections or zones of 3000 feet. Well, under any plan of proration, whether it be straight per well basis or other basis, the production per zone can be calculated. It has been recognized since the inception of the East Texas field that the eastern part of the field gains oil and the western part of the field loses oil, so it naturally follows that somewhere between the east and west points there would be a point that neither gained nor lose. By establishing these cross sections across the field at a convenient intervals to obtain this neutral point, a line of zero maximum recovery can be established from north to south across the reservoir. To the west of this line all property will lose production; to the east of the line all properties will gain; and it is easy to compute in areas of 1,000 feet, or [fol. 385] 3,000 feet, or whatever the scale of the map might be, just which zones will lose and which will gain, and what per cent of loss or gain they will have.

Q. Have you undertaken to make such a map and place such a line on it, based upon the production of this field under the existing proration order?

A. Yes, sir.

Q. Is the map up on the board?

A. Yes, sir.

Q. What is the number of this?

A. Exhibit No. 28.

Mr. Baker: Suppose we mark that as Rowan & Nichols' Exhibit No. 28.

(Thereupon, the map referred to above was marked as Rowan & Nichols' Exhibit No. 28.)

Q. Will you point out the line?

A. This map is very similar to the isopach map prepared by the Commission, showing the lines of equal thickness of sand, and contours on that basis, plus the control points that are on the line. Some one thousand Schlumberger logs were used in compiling the map, and they are indicated on here by squares or triangles. Those Schlumberger logs were plotted in cross sections from west to east, and the red line as shown on the map cutting from the northeastern part of the field down through the center part of the field, passing west of Kilgore on down to the southern part of the field, is the neutral line of maximum recovery. All properties located to the west of that line lose oil; all properties located to the east of that line gain oil on the present [fol. 386] twenty-five seventy-five per cent basis allowable.

Judge Sibley: You are a little west of it, aren't you?

A. Yes, sir; some 3,500 feet.

Q. Now, Mr. Buck, you have made certain statements here before the Court to the effect that on this per well basis of prorating oil, that the wells to the west will inevitably lose west of the line, and to the east will gain?

A. Yes, sir.

Q. Have you prepared a device by which you can demonstrate that as if you were in a laboratory?

A. Yes, sir.

Q. Do you have that here in the court room?

A. Yes, sir.

Q. How long would it take you to make the demonstration?

A. Possibly ten minutes.

Mr. Moody: Will the Court permit us to use that character of evidence, or not?

Judge Sibley: It doesn't look like to me that it needs demonstration.

Mr. Moody: We can't see it from down here, maybe, the way the Court sees it from up there. We are prepared to make the demonstration.

Judge Sibley: It seems to me every drop of oil taken out of the pool is replaced by salt water on the west, and all

of it is bound to be moving east. There is nothing else to happen.

Mr. Moody: The purpose of this device would be to show that leases on a per well system of proration—that leases [fol. 387] on the east will recover many times as much oil as was originally in place under those leases, while leases on the west will recover substantially less oil; and that that is brought about by reason of the shape of the oil-bearing sand sections. In other words, as I undertook to describe it yesterday, it is a triangle with the long side of it up and the two short sides down, but under the way that the water moves in, the leases to the east will recover substantially more.

Judge Sibley: You just can't hold this still down there until every man gets his reserve. Unless the west man goes at a terrific rate of speed, he will lose some of his, inevitably.

Mr. Moody: This demonstrates the proposition that based on per well recoveries of per well allowables, that the east side is favored and the best properties in the field are drained to the benefit substantially of the poorer properties on the east.

Judge Sibley: Well, there is no way to help that, is there, except to give the west more, or to shut the east down?

Mr. Moody: Yes, sir; there are methods of proration that will prevent waste and will allow operators in the field to recover in proportion to what they have; but it cannot be done as long as there is a 20 barrel minimum and every well is prorated first on 20 barrels.

Judge Sibley: That is evidently the snag in the stream.

Q. I will ask you this question, Mr. Buck. In your opinion, is the minimum or flat per well allowable of 20 barrels to every well in the field, before the application of the bal- [fol. 388] ance of the present proration formula, necessary in order to prevent waste, or necessary in order to prevent the abandonment of wells, or necessary in order to prevent the loss of oil, or necessary in order to keep the wells in the field operated?

A. No, sir; I don't believe that it is.

Q. Now, then, why is it that under this plan of proration that allows every well in the field a flat allowable of 20 barrels to the well before applying the formula, that the east side is benefitted and the west side and the fairway, the most productive parts of the field, lose oil?

A. The application of the formula, of course, first, is on a straight per well, or 75 per cent of the formula is on a straight per well basis of 20 barrels. In your areas of thinner sand sections with a less amount of oil in place, they are necessarily favored to the extent of this 20 barrels to start with. Now, your 25 per cent that is applied is applied on sand thickness, pressure, potential, and acreage. Now, your east side is your most densely drilled area. So you have more wells per acre density there to receive 20 barrels to start with, although you have less reserves. As your formula is applied times the factor of bottom hole pressure and sand thickness, the west side is favored slightly on account of the pressure difference over there; but the allocation of the oil is so small, and that density of drilling greatly overcomes it to the point that your recovery per hundred acre-feet of sand per day is exceptionally higher in the east than in any other part of the field.

Q. Does this device demonstrate that as a physical fact?

A. Yes, sir.

Q. From the operation of the laws of physics?

[fol. 389] A. Yes, sir.

Q. Now, in your opinion, if the 20 barrels minimum was eliminated from the present order, and only the formula without the 20 barrel minimum applied, would the properties then be allowed to produce substantially in proportion to what they have under them, as compared with other properties in the entire field?

A. Yes, sir; I have made such calculations on that formula, and just applying it straight and in the trial runs that I have made, in applying it to various leases, in calculations of recovery per hundred acre feet of sand per day, it checks fairly close to the amount of reserve that a property might have.

Q. Would the west side produce substantially in proportion to what it has?

A. Yes, sir.

Q. And the same way with the fairway?

A. Yes, sir.

Q. And the same way with the east side?

A. Yes, sir.

Judge Sibley: It would produce equally currently, but it would still play out first.

Mr. Moody: Necessarily.

Judge McMillan: The question was asked upon the idea that it would produce in relation to what they have got.

Q. As the oil in the west played out, would it produce currently in proportion to what it had?

A. Yes, sir.

Q. Unless the Railroad Commission does something to give it an advantage, is the property in the west side of the [fol. 390] field as valuable as the property in the center or elsewhere, where the sand is thickest?

A. No, sir.

Mr. Moody: I think it is like the man who bought his property at Sixth Street and Congress Avenue; he made a better purchase than the man who bought his property down at the bridge.

Q. Now, under open flow, if you had no regulations and threw the field open and allowed all the wells in the field to produce all they could, what part of the field would be drowned out first?

A. The west side.

Q. Would the west side, under that sort of operation, recover oil in the same proportion that others recovered, as related to what they had under their tracts originally?

A. No; regulated control would give the west side more recovery in relation to what it had in place than wide open flow would.

Q. Under wide open flow, the west side would be drowned out before the west side got its oil?

A. Yes, sir.

Q. Can you do more for the west side than let it produce in proportion to the oil under that part of the field, without taking away from someone to give to someone else?

A. We have been talking about recovery here and production. We overlooked one important factor in this problem, and that is that, although we have all of the 4,990,000 acre-feet of sand in each of those, each acre-foot of sand is capable of delivering the same amount of oil each day without creating waste. Now, the pressure would be your deter- [fol. 391] mining factor whether that sand had the ability to give it up or not; and if it was not giving it up at an efficient rate, your pressure would reflect it. The west side having the highest pressure, being closest to the water

edge, could have the ability of giving up this oil at an easier rate of pressure dissipation than the east side. And in making that correction for the straight formula there, and eliminating a lot of other things—just the acre-feet of sand, pressure differential, I believe you could get almost equity there in what you had in place to what you recovered; although your daily rate of production on the west side would be higher, it would be cut out sooner.

Q. That means if the field were prorated on the basis of acre-feet of sand times bottom hole pressure, the west part of the field would have an advantage, as compared with other parts of the field, and would get more oil; but it would be substantially equitable as over the entire field; is that what you mean?

A. Yes, sir.

Q. Now, can the west side ever produce oil as long as the balance of that field produces oil under any practical system, unless oil is taken from one owner and given to another by some Railroad Commission regulation?

A. You mean recover?

Q. Can the west side be made to produce oil as long as the balance of that field, without taking from somebody and giving it to the man with the poorer situated properties on the west side?

A. No, sir; I don't know how you could prolong that over [fol. 392] the life of the field.

Q. In the natural operation of that field or the production of it, is it or not inevitable that the west side is to be the first part of the field to go off production?

A. It is inevitable.

Q. Now, if you apply this present formula, without the 20 barrel minimum, will the west side produce about in proportion as other parts of the field, their respective reserves considered?

A. Not with the straight application of this formula, but it will be better than the present.

Q. Does the 20 barrel minimum penalize the west side and also the fairway in favor of the east side?

A. Yes, sir.

Q. In other words, the 20 barrel minimum hurts the west side the same as it hurts the fairway?

A. Yes, sir.

Q. And the west side would be better off without the 20 barrel minimum than with it?

A. Yes, sir.

Q. But you recommend, instead of the 20 barrel minimum, you recommend the acre-feet of sand times the bottom hole pressure as giving the west side a better opportunity than it would enjoy under the present formula without the 20 barrels?

A. Yes, sir.

Q. And would that be better for the west side without the 20 barrels?

A. I believe it would.

Q. That form of proration?

A. Yes, sir.

Judge Sibley: I believe this would be a good place to stop. We will recess until tomorrow morning.

(Thereupon at 5 o'clock P. M. Wednesday, February 14, 1940 court recessed until 9 o'clock Thursday, February 15, 1940.)

[fol. 393] Thursday, February 15, 1940

Morning Session, 9:00 o'clock

E. O. Buck, a witness for plaintiff, resumed the witness stand, and continued his testimony, as follows:

Direct examination (continued).

Questions by Mr. Moody:

Q. Mr. Buck, I don't believe that it was stated into the record yesterday. Have you identified on this Rowan & Nichols Exhibit 28 the Rowan & Nichols Todd "A" lease with the letter "A," and the Rowan & Nichols Todd "B" lease with the letter "B"?

A. Yes, sir.

Q. Mr. Buck, have the number of wells in the East Texas field that will not produce as much as 20 barrels per day increased within the last year?

A. Yes, sir; according to the Railroad Commission's schedule that is correct.

Q. Do you know approximately what per cent the increase has been?

A. No, I don't. Last year, if I remember, there was around 425 or 450; and I think the Railroad Commission's schedule at this time is about 550 or 555 wells.

Q. That would be somewhere close to 25 per cent increase, then?

A. Yes, sir.

Q. Now, as time goes on, if this present plan of proration is continued, what is your opinion as to whether or not the number of wells that will not produce as much as 20 barrels per day will or will not increase?

[fol. 394] A. In my judgment, that type of well will increase.

Q. Now, Mr. Buck, have you prepared some calculations —yesterday mention was made of it. Mr. Buck, the paper that you hold in your hand has been marked as Rowan & Nichols Exhibit No. 29. State to the Court what that exhibit shows, please, sir.

A. This is a tabulated comparison of the well density, the allowable, and allowable per 100 feet, acre-feet per day for the East Texas field for various leases in the field, including the Rowan & Nichols Todd "A" lease, which shows the operator, and the farm or lease, the number of acres in the tract, the sand thickness, the acre-feet of sand, the daily allowable, the well density, and production in barrels per hundred acre-feet of sand per day.

Q. Does it show the Rowan & Nichols Todd "A" lease as having a daily production of 10.11 barrels per 100 acre-feet per day?

A. Yes, sir.

Mr. Hart: I want to renew the objection I made yesterday to similar evidence offered by the Humble, that these are simply isolated examples.

Judge Sibley: We will allow you to prove some, but don't take too much time on particular instances.

Q. Now, you have listed a number of leases under the name of Hamilton & Smith. Where are they?

A. In the Kilgore townsite.

Q. Is that one of the densely drilled areas of the field?

A. Yes, sir.

Q. In what portion of the field is that?

A. In the Eastern center part of the field—in the east edge and midway between north and south.

ol. 395] Q. The production there, is it shown to be 62.62 rrels per day per 100 acre-feet of sand?
A. Yes, sir.
Q. Now, you show the R. M. Wood lease. That is the se you spoke of here yesterday?
A. Yes, sir.
Q. That is 27.08 barrels per day per 100 acre-feet of nd?
A. Yes, sir; that is based on the Railroad Commission's hedule showing the R. M. Wood tract to contain one acre.
Q. If it were one-third of an acre, it would be considerably re than that?
A. Yes, sir.
Q. You mean one surface acre?
A. Yes, sir.
Q. Then the Pace Petroleum Company's Tripp Elder se, where is that?
A. Over in the Kilgore townsite.
Q. That Pace Petroleum Company's Tripp Elder lease, t is calculated on how many wells?
A. Four wells.
Q. 1.4 acres with four wells?
A. Yes, sir.
Q. And the allowable is 140.9 barrels per 100 acre-feet sand?
A. That is right.
Q. Do you know whether or not the Railroad Commission , within the last few weeks, granted permits for two ditional wells on that tract?
A. I have been so informed.
Q. You have not examined the records yourself?
l. 396] A. No, sir.

Mr. Hart: We object to it, then.
Mr. Moody: I withdraw it.

Q. Now, the Ambassador Oil Company's tract, where is t located?
A. In the London townsite.
Q. Is that a densely drilled area?
A. Yes, sir.
Q. What part of the field is that in?
A. In the fairway, but in the southern one-third of the d.

Q. The allowable there is 127.15 barrels per 100 acre-feet of sand?

A. That is correct.

Mr. Moody: We offer that in evidence.

(Thereupon the paper above referred to was received in evidence and marked as Plaintiff's Exhibit No. 29; also Plaintiff's Exhibit No. 29-a.)

Q. Mr. Buck, the paper you hold in your hand has been marked Rowan & Nichols' Exhibit 30. State what that is, please sir.

A. This table is a tabulation comparing the original reserves and the number of days required to deplete the recoverable oil that is under each of the tracts; and it assumes that Rowan & Nichols will recover 100 per cent of its recoverable oil. If it does, these other tracts, then, assuming they will produce the same length of time, because they are at least as high as, if not higher on the structure, it shows the per cent of recovery they will receive in producing the same period that this Rowan & Nichols will produce in recovering 100 per cent of its oil.

Q. Is that based on the present plan of proration existing in the field?

A. Yes, sir.

[fol. 397] Q. Are these the same tracts of land shown on Rowan & Nichols' Exhibit No. 29 that you testified about a moment ago?

A. Yes, sir.

Q. Now, on this sheet you take Rowan & Nichols Todd "A" lease as producing under this plan of proration long enough to recover 100 per cent of the recoverable oil in place under the lease?

A. Yes, sir.

Q. Then the Pace Petroleum Company Tripp Elder would recover 1,292 per cent of its oil, is that right?

A. Yes, sir.

Q. And the Ambassador London School Lot would recover 1170 per cent of its oil?

A. Yes, sir.

Q. The R. M. Wood would recover 273 per cent of its oil?

A. Yes, sir.

Q. And the Hamilton & Smith, 18,599 per cent of their oil?

A. Yes, sir.

Q. You say all these leases are as high or higher on the structure than the Rowan & Nichols tract?

A. Yes, sir; that is correct.

Q. Now, is this typical of conditions that can be picked out existing all over the field, as shown by this Rowan & Nichols Exhibit 30?

A. Yes, sir.

Q. Mr. Buck, have you made any figures on the amount of oil—we will, to illustrate the working of this order. Take that Wood tract. That has about one-third of an acre, according to the testimony here, although the Railroad Commission Company's evidence shows it to be an acre. Have you made any figures on the amount of recoverable oil originally in place under that lease, the production from [fol. 398] the tract to date, the remaining reserves, and the number of days at its present allowable that it would take that tract to produce the equivalent of the recoverable oil originally in place under the tract or in the tract, and made a comparison of that lease and the operation of this order on it as compared with the plaintiff Rowan & Nichols Todd "A" lease.

A. Yes, sir.

Q. All right. Will you state those figures to the Court, please, sir, and what they show?

Mr. Hart: I don't want to repeat my objection continuously; but may it be understood that we have the same objection to all this?

Judge Sibley: Yes, sir. They are admitted only to show how this order works in extreme cases.

A. The R. M. Wood tract, calculated on one-third of an acre, has in place some 27,000 barrels of oil. The well was completed August 24, 1937, and calculating back on its daily allowable since that time, the well to January 1, 1940, produced 15,272 barrels. That would leave some 11,000 barrels—slightly in excess of 11,000 barrels to produce, and at the present rate of production of 27.1 barrels per day, it would require about 425 days to recover 100 per cent of the recoverable oil under that tract.

Q. That is under the application of the present plan of proration?

A. Yes, sir.

Q. As to the Rowan & Nichols tract, I believe you testified yesterday at the present rate of production, it would take some——

A. 7,750.

[fol. 399] Q. For it to produce its recoverable oil?

A. Yes, sir.

Q. Now, Mr. Buck, can you, by comparing the number of barrels of oil a lease has produced per surface acre with the number of barrels that another lease in the field has produced per surface area, can you get an accurate comparison as to whether those leases are or are not being allowed to produce in relation to their position on the structure, the thickness of the sand, and the capacity of the wells on the lease to produce oil?

A. No, sir, the surface measurement would not indicate that.

Q. Explain why that fact is true.

A. Assuming two 5-acre tracts, one to be in an area of 10 feet of sand thickness would only have 500 acre-feet of oil sand under it, and another 5-acre tract in the center of the field with 100 feet of sand thickness would have 5000 acre-feet of sand.

Q. Now, then, would a variation of pressures on the two leases have anything to do with the capacity of the wells to produce or with the value of that property as an oil producing property? I am speaking of bottom hole pressure.

A. The bottom hole pressure would be indicative in that sense as to the ability of that property currently to produce its oil; but it might not reflect the reserve that was under that particular property.

Q. If you just measure production by surface acres, that does not give you any facts about bottom hole pressure or potential of wells or thickness of sands or porosity of sands or permeability of sands, and in that sense you just measure by the number of barrels production per surface acre, are you taking into account those various things in determining how much oil ought to be recovered from the [fol. 400] tracts, based upon the amount each of them, respectively, have?

A. No, sir; I have not made those calculations.

Q. In view of that, suppose an operator in this field drills his tract of land to the average density of the field, or a little less than that, under the application of the formula now in force by the Railroad Commission for prorating the field, would the fact that he has the average density, or something less than the average density of the field in drilling, measuring average density by surface acres, would that fact—the fact that he has drilled to the average, or less than the average density of the field, enable him under this order to produce oil in proportion to the reserves under his lease as compared with the reserves of the field, or allow him to produce as much oil in proportion to what he as some of the other leases in the field might have, that were even more or less densely drilled?

A. No; you could not make that comparison. You see, that density is slightly in excess of one well to five acres.

Q. That is surface acres?

A. Yes, sir. Now, the average sand thickness of the field is around 37 or 38 feet—37.86 feet. If you take a 5-acre tract that has 100 acre-feet of sand, it would take about two and a half sand on that 5-acre tract to give you the same density as the 5-acre density of the field, in comparison of reserves.

Q. Well, then, in order to make this order operate equally among operators in that field, does that mean that each lease owner would have to drill his lease down to the density per 100 acre-feet of sand of the most densely drilled tract in the field?

A. To make it equal, that is correct.

Q. That would not be practical, would it?

[fol. 401] A. No, sir.

Q. Now, Mr. Buck, under open flow conditions, you were asked some questions yesterday about whether or not the east side would lose part of its oil in place, and you stated that under open flow conditions the east side would lose part of its oil in place, and I believe you said the west side also. The fairway would have the advantage?

A. Yes, sir.

Q. Can you give the Court any estimate as to what per cent of the recoverable oil in place under the eastern portion of the field would be lost under open flow conditions?

A. The loss there, based on one observation in the East Texas field under approximately open flow conditions and

other calculations, would be in the order of 25 or 30 per cent of the recoverable oil which would be lost.

Q. Now, have you had any experience in that field under open flow conditions and the effective open flow conditions on the east side leases?

A. There was virtually open flow when I had this experience, yes, sir.

Q. Tell the Court what happened to wells on the east side under open flow conditions, and then what happened to wells after restrictions were put on them.

A. In the summer of 1931, when there were less than 1800 wells in the field, the daily production was in excess of one million barrels per day. There was one lease, the Sinclair W. W. Holland lease, that was located in the Joinerville area, which I calculate would have some 27,000 barrels of recoverable oil per acre under it. By the time, or just prior to the marshall law shut down in the field on [fol. 402] August 17, 1931, this lease had ceased to flow, and they had equipped the lease with an air jammer, or were trying to lift the oil with air, or they were trying to lift the oil with air—blowing the oil out of the well with air; and there was very little production that could be obtained off the property. The production was down somewhere in the neighborhood of 17,000 barrels per day, showing a loss of 10,000 barrels a day that the property was suffering; as to the west of this property there was good oil-bearing sands and good wells capable of producing twenty or thirty thousand barrels a day.

Q. After the field was closed in and they went to producing the field under proration, what happened to those wells?

A. The field was shut in seventeen days, and after the field was opened up again, all those wells started flowing oil again. That entire lease was re-charged, along with other leases in that field. My recollection is that there were 144 pumping wells in the field that were just pumping small amounts of oil that went back as flowing wells after the marshall law shutdown was lifted.

Q. Were those 144 wells on the east side?

A. Yes, sir; all on the east side.

Q. Now, Mr. Buck, I believe you stated that 20 barrel minimum will cause the east side properties—the west side properties to lose to the east side properties as long as this order is continued in force. Can you take the black-

board and a piece of chalk, and illustrate that to the Court, as to how it will work under a laboratory experiment showing equal takings clear across this field?

A. I believe that question is stated a little wrong, but I think I know what you mean.

[fol. 403] Q. Can you do it?

A. Yes, sir.

Mr. Moody: Do we have permission of the Court to use the blackboard?

Judge Sibley: Yes, sir, I reckon so.

A. If the area outlined on the board here is a cross-section of the East Texas field with the water level as indicated at minus 3320, this would represent the original conditions as they existed in the field prior to its development. As wells were drilled in the field, there was a natural water rise in the field to displace the oil. Now, if we cut this field into equal sections, and by volume compute the area of each section, and the area of the whole, and produce this field under a minimum allowable, or give to each well the same amount of oil each day, or virtually so, each of these sections will be producing the same amount of oil.

Mr. Hart: We want to object to this, because his assumption there is that each section in the field will be producing daily the same amount of oil, and the evidence shows that the allowable in the center of the field is considerably larger than the allowable on the edges.

Judge Sibley: This is an ideal situation, of course, and not supposed to be based on actual facts.

Mr. Moody: The purpose of the illustration is to show the effect of the 20 barrel minimum allowable clear across the field.

Judge Sibley: I don't think there is any need of showing it, as it just could not work but one way; but go ahead and make it brief.

Mr. Hart: Note our exception.

A. The field being successively drowned out in each sec-
[fol. 404] tion as the water intersects the top of the producing zone, will show the various producing zones as they got out, and the other ones that are producing. The other important part of the illustration is that if a constant rate of flow is maintained when the reserves are as much as 690,000 barrels of oil per day, as the base of the

triangle is shortened, the water rise would naturally be much more rapid on any constant rate of flow, and although the water rise has been rather small so far, as the balance of the 50 per cent is taken from the field, the water movement will be accelerated in the triangulation ratio that we have here.

Q. Does that mean that as the man up at the east end is allowed to produce his 20 barrels, that he is replenished by oil moving from the man at the west end?

A. Yes, sir.

Q. As the well begins to be exhausted, and the water is under more of the field and has risen higher, will the rise be more rapid in the later life of the field than now, or less rapid?

A. That would depend entirely on your rate of flow. If this 690,000 barrel rate is maintained, it would be greatly accelerated.

Judge Sibley: Then all those wells in the east would have to run wide open to produce that flow?

A. Yes, sir, that is correct.

Q. If the allowable for the field of 690,000 barrels is reduced in the later life of the field, and before the Rowan & Nichols lease is drowned out, but the plan of proration is continued the same—that is, while the field allowable is reduced, the plan of distributing the field allowable among wells remains the same, say, 20 barrels per well, and then the balance above is prorated on the formula, so long as they can have enough field allowable to prorate in that [fol. 405] way, will Rowan & Nichols continue to suffer proportionately on their Todd "A" lease the injury that you have testified about yesterday?

A. Yes, sir; the ratio will be the same.

Q. Now, if the field becomes depleted and it becomes necessary to reduce the total field allowable, and that is reduced to an amount where they cannot give a flat per well allowable of 20 barrels, but the order does give a flat per well allowable and then prorates the balance above that so that 75 per cent of the daily allowable is prorated on a per well basis, and approximately 25 per cent on a basis of some factor such as is used in the present order, what will be the effect on Rowan & Nichols, assuming their properties are still producing oil; what will be the effect on Rowan & Nichols' properties with respect to whether

or not that Todd "A" lease will continue to suffer the injuries that you have testified about yesterday that it is presently suffering?

A. That ratio, so long as the allowable is maintained on a 75-25 basis, the ratio of loss will be the same to Rowan & Nichols, regardless of what the top allowable might be.

Q. You mean this system of 75 per cent per well allowable and 25 per cent on some other factor will result in Rowan & Nichols' not being able to produce its share of the recoverable oil?

A. That is correct.

Q. Now, Mr. Buck, you have testified about the effect of this order on Rowan & Nichols Todd "A" lease. I believe the testimony shows that Rowan & Nichols have one other lease in this field, the Todd "B" lease. Are you familiar with that lease?

A. Yes, sir.

Q. State whether or not, in your opinion, whatever Rowan & Nichols may lose from its Todd "A" lease, it will make [fol. 406] up from production on its Todd "B" lease, or is that lease affected in about the same way by this order?

A. The two leases are practically identically located on the structure and have practically the same identical physical characteristics, so that their losses in proportion to their reserves, would be the same.

Judge Sibley: They are drilled to about the same density?

A. The Todd "B" lease has one well to five acres.

Q. The sand is not quite as thick there, is it?

A. Not quite.

Q. The pressure is not quite as high?

A. Not quite.

Q. At any rate, the Rowan & Nichols Oil Company is not making enough on its Todd "B" lease to make up for what it has lost on its Todd "A" lease?

A. No, sir.

Q. Yesterday Judge McMillan asked if some of us would show here how this formula is worked out by the Railroad Commission and how it is applied to leases. Can you do that?

A. Yes, sir. The page that I have here shows the lease, and the operator, the location of the lease, and the survey it is in, the number of acres in the tract, and the density of the tract, and the number of wells, and it has a potential

factor of the well as taken from the Commission's potential map, which is multiplied by the well density acreage on the lease. Then the sand thickness of the tract by wells is given.

Q. Pardon me. I believe I can get a page or two out of here so that the Court can see a little more clearly than they can get it from your statement of it there as to how that operates. (Counsel hands page to witness and pages to the [fol. 407] Court.) Now, we all have different pages here, but let me ask you a few questions. The right hand column over there is the number of the well, is it not?

A. Yes, sir.

Q. And then the name of the operator appears in large type, and the name of the lease in smaller type?

A. Yes, sir.

Q. Then the next column is the potential?

A. Yes, sir.

Q. And underneath the name of the operator, they have the acreage in the lease and the drilling density, I believe?

A. Yes, sir.

Q. Then the next is—what is Acrg. Pote.? What does that column mean?

A. That "Pote." would be the potential of the well. Acreage potential would be the acreage multiplied by the potential.

Q. In other words, the next column is the product of the acreage and his potential?

A. Yes, sir.

Q. How is that figure obtained—by multiplying the number of acres per well on the lease by the potential of the particular well?

A. Yes, sir.

Q. Then, the next column is marked S. T. What does that mean?

A. That is sand thickness of that well.

Q. Now, the next figure is acreage Pote. S. T. That is acreage potential sand thickness?

A. Yes, sir; one multiplied by the other.

Q. That is the product obtained by multiplying acreage potential by the sand thickness?

A. That is right.

[fol. 408] Q. Now, the next is B. H. P.

A. That would be bottom hole pressure of the well.

Q. Now, the next column is acreage potential sand thickness bottom hole pressure?

A. Yes, sir.

Q. That is obtained by multiplying acreage potential sand thickness by the bottom hole pressure?

A. Yes, sir; and then dividing by 10,000.

Q. Why do they divide by 10,000?

A. Well, by that time the product would be so big that it would be unwieldly in handling; and they had to get a total for the field as a constant, so they divided all the factors by 10,000.

Judge Sibley: That cut everybody down in the same proportion?

A. Yes, sir.

Q. Now, the next column is prorated allowable?

A. Yes, sir.

Q. How do they get that prorated allowable?

A. The sum of the total of your acreage potential sand thickness bottom hole pressure was found to be some 41 million and some odd one hundred thousand after it had been divided by 10,000. Now, the field has a proratable amount of oil to be allocated on this formula of some 176,000 barrels. The constant divided into the proratable oil gives a factor of .004325. Using that constant of .004325 times the factor that is shown on the column "acreage potential sand thickness bottom hole pressure" gives the proratable oil for that well.

Q. In other words, that factor is multiplied into the 176,000, and then you get the proratable oil?

A. Yes, sir.

[fol. 409] Q. And then you add to that the 20 barrels shown in the next to the last column?

A. Yes, sir.

Q. And in the last column "Total allowable", is that proratable allowable plus the—they put that down "Marg."—that 20 barrels; is that the abbreviation for marginal?

A. Yes, sir.

Q. Now, that fraction,—could you write that fraction on the board?

A. Yes, sir.

Q. What are the factors in the numerator and in the denominator? Do they divide the numerator by 10,000, and also divide the denominator by 10,000?

A. Yes, sir.

Q. They divide through by 10,000, the total fraction—that is, to make it simple in calculating?

A. Yes, sir.

Q. The top of the fraction would be the acreage of the lease times the sand thickness times the potential of the well times the bottom hole pressure?

A. Yes, sir.

Q. And then the denominator would be the total acreage of the field times the average sand thickness?

A. No, sir.

Q. Explain it.

A. You take your numerator of this factor and add that all together.

Judge McMillan: In other words, you add together acreage, sand thickness, potential, and bottom hole pressure?

A. Add all that together and divide that by 10,000, and divide that into the proratable oil for the field.

[fol. 410] Judge Sibley: Do you add it together or multiply it?

A. They are added.

Judge McMillan: Get up there at the blackboard and show it. It seems to be very clear, but nobody seems to understand it alike.

A. You have a well with a density of 4.37 acres, for example.

Mr. Hart: One well on 4.37 acres?

A. Yes, sir; one well on 4.37 acres. We will make it this way——

Judge Sibley: Take a simple instance.

A. I can copy it quicker off the page here. (Witness puts data on blackboard.) Now, this well is a well located on 4.37 acres, and it has a potential of 550 barrels per hour. 550 times this 4.37——

Judge McMillan: You are multiplying that instead of adding?

A. Yes, sir; this is multiplying.

Mr. Moody: What is your sand thickness there?

A. 15. That gives this third column of 2404. Now, the sand thickness is 15, so the sand thickness is multiplied by this factor (indicating).

Judge McMillan: Multiplying again?

A. Multiplying again, and that gives 36.60, and then the bottom hole pressure is 1195; so the bottom hole pressure is multiplied by that, and then it is divided by 10,000 to get a factor of 4.31 for that well. Now, each well in the field is calculated that way. Now, this 4.31 and all of that column is added to give a total of 41, billion plus.

Judge Sibley: That is for all the wells?

A. That is all the wells in the field.

Q. Now, are they added or multiplied?

[fol. 411] A. They are added, sir. All right; now, the field is permitted to produce 172,000 barrels of proratable oil, above what is deducted for the 20 barrels.

Mr. Hart: 176,000, isn't it?

A. 176,000. Now, this figure of 41 billion plus is divided into the 176,000 to get the factor of .004235, or in that proportion, or, rather, somewhere near that.

Judge Sibley: That is for each unit?

A. That is correct, sir. Now, this fraction .004235 is then multiplied by 431 for each well, and in this instance it would be 1.83 barrels of proratable oil which would be assigned to that well.

Judge McMillan: And then 20 barrels more?

A. Plus 20 barrels, which gives a total there of 21.83.

Q. Now, you divide this figure by 10,000 also?

A. No, you see it has been divided by 10,000, because this is the addition of all these factors.

Q. Let's see if we can write that plainer over here. It will be acreage times sand thickness?

A. Yes, sir. Now, the next is potential.

Q. All right. Times potential.

A. Times sand thickness.

Q. Using S. T. for sand thickness.

A. Times bottom hole pressure.

Q. And using B. H. T. for bottom hole pressure. All right.

A. Now, all of that——
Q. That is on the lease, is it?
A. That is on the lease.
Q. Now, this is divided by 10,000, is it?
A. Yes, sir.
Q. Now, do you divide this thing you have got down here by 10,000, too?
[fol. 412] A. No, sir.

Judge Sibley: What is that "thing" down there?
Mr. Moody: Well, that is the thing that is in the field.
Judge Sibley: That is the factor?

A. You see, it has been divided by 10,000.
Q. All right. You divide this by 10,000?
A. That is correct.
Q. Well, let's see; I don't see how to do that.

Judge Sibley: Put 10,000 under that.

Q. Yes, sir; I have got to get something else under that. (Laughter.)

Mr. Hart: If the Court please, we have got Dr. Patten here to explain this in just a few minutes, and won't have to do this figuring.
Judge Sibley: We are not going to multiply any of them. (Laughter.) Everybody is pleased with that formula except——
Mr. Hart: That is what I think.
Judge Sibley: The whole case turns on putting that 25 barrels in there.

Q. Is that the formula that you have over there now on the board, as you understand it?
A. That is the formula, with the exception that the sum or the total has to be divided into the proratable oil, this 176,000 barrels, to get that constant.
Q. Oh, I see. Then you have got to divide that total acreage of the field plus potential, plus sand thickness, plus bottom hole pressure, you have got to divide that into that 176,000?
[fol. 413] A. That is correct, sir.
Q. All right.
Mr. Moody: Well, Your Honor, I hope I have made that clear to the Court. I haven't to myself.

(Laughter.)

Judge Sibley: I think I understand it, Governor.
Mr. Moody: All right. I will pass the witness.

Cross-examination.

Questions by Mr. Baker:

Q. I want to ask one question, please, Mr. Buck. I believe in——

Judge Sibley: I am speaking for myself, because I am the backward member of the staff. I am not as well acquainted with these things as the other members are.

Q. I believe yesterday in response to a question from Judge Sibley, you made an assumption of the top allowable for the field remaining constant of 691,000 barrels during the balance of the producing life of the field?

A. Yes, sir.

Q. Do you recall that?

A. Yes, sir.

Q. Now, do you think that that is practical at all?

A. No, sir.

Q. To maintain such a top allowable?

A. No, sir, it could not be.

Q. As water encroaches from the west, why, the field will shrink, will it not, gradually?

A. Yes, sir.

Q. At one stage it will be three-fourths as big, at another stage half as big, and at another, a fourth as big, until it gets down to nothing?

[fol. 414] A. That is correct.

Q. Don't you think as the field becomes smaller your top allowable will have to be decreased, proportionately, at least?

A. Yes, sir.

Q. Must that be done in order to prevent physical waste?

A. It will have to be.

Q. Then, if this formula is applied, or this plan or proration that is embodied in the order of January 24, 1940, is applied, it will have to be applied to a smaller field allowable, will it not?

A. Yes, sir.

Q. Then your—if you allow the 20 barrels per well minimum to all of the wells, it is not—would it not be assumed

that your proration factor will apply to about the same proportion of the total field allowable as at present?

A. I think that it would be as the field is flooded out, your ratio on a 20 barrel minimum would stay somewhere in the order of 75 per cent per well and 25 per cent on your formula allocation.

Q. You assume that because you assume that the Railroad Commission will so adjust the top allowable from time to time as to insure efficient operation and to prevent waste?

A. Yes, sir; you see, the field, in delivering its production, is only capable of producting some 8 barrels per 100 acre-feet of sand per day, with some corrections, and as the total acre-feet of the field have been flooded out, why, as that is reduced, why, the efficient top allowable of the field will have to be reduced in accordance.

Q. Then you will think the maintenance of an efficient top allowable will maintain that top allowable at such figure that [fol. 415] during the balance of the life of the field the present ratio between the amount of oil that is alloted arbitrarily 20 barrels to a well, and that which is proratable under the formula, will remain about constant?

A. Yes, sir, I think so.

Q. Or in the ratio of three-fourths and one-fourth?

A. Yes, sir.

Judge Sibley: That is because the number of wells will shrink all the time and the 20 barrels per well will go out at the same time?

A. Yes, sir.

Judge Sibley: And leave the average about the same?

A. Yes, sir.

Mr. Baker: That is all.

Mr. Saye: I would like to ask one or two questions, Your Honor, please.

Examination by Mr. Saye.

Questions by Mr. Saye:

Q. Mr. Buck, I am going to ask you a few questions about the Rowan & Nichols lease, and I am not taking that lease because we are making any attack on Rowan & Nichols, but because you are more familiar with that, and I want to talk about it with reference to the field conditions.

Mr. Moody: Just a minute, please, Mr. Saye. May it please the Court, I understand that Mr. Saye is representing Mr. Fischer, and I understood Mr. Fischer to state yesterday that he had no testimony to offer. We are not offering any testimony whatever on Mr. Fischer's case at all, either for it or against it; we are only offering it, as far as I am [fol. 416] concerned, we are only offering testimony on our own case, in which Rowan & Nichols are complainants, I would like to know whether Mr. Saye is questioning this witness as a witness for Mr. Fischer in the Fischer case. This testimony, so far as we are concerned, is not offered for or against Mr. Fischer. He is at liberty to adopt it if he wants to, or not adopt it, as he chooses.

Judge Sibley: What about the understanding of the Railroad Commission; do you regard this as in against Mr. Fischer?

Mr. Hart: Yes. As I understood the Court's ruling at first, all evidence could be used for or against a party.

Judge Sibley: Yes, that is the general understanding. All right, go ahead, then, Mr. Saye.

Mr. Moody: All right.

Q. Mr. Buck, in distance, how far is the Rowan & Nichols lease from the west side of the field?

A. I would have to measure it; I don't have the——

Q. Can't you give me approximately how far it is?

A. About 22,000 feet.

Q. About 22,000 feet?

A. Yes, sir.

Q. And how many feet wide is a cross-section of the field from east to west at that point?

A. That field is roughly, there in that area, about twelve—eleven or twelve miles wide at that point, and the Rowan & Nichols lease is about two-thirds of the distance from the west to the east; that is an estimate—22,000 feet. It is about that. I can measure that for you if you would like to have it.

Q. Well, if you can give me the approximate figure, [fol. 417] just so—we won't take up much time, if you think that is approximately it, then. If you think it is about a third of the way across the field from the east?

A. No, it is a little more than a third of the way. In looking at the map there, the exhibit there shows the location

of that property, and it is not quite half, but more than a third of the distance.

Q. Well, now, at this time how far has the water encroached from the west towards that lease, and in that section?

A. Underground—on the basis of the sand in there?

Q. That is right. Where is the water table from the west to the east?

A. That would be vertically? Do you mean horizontal movement or vertical movement?

Q. Either one.

A. Either one; the vertical movement in that particular area—of course, it has not reached Rowan & Nichols' lease yet at all, but the vertical movement to the west of the Rowan & Nichols' lease practically is in the neighborhood of about 8 to 10 feet.

Q. Now, the vertical movement that you talk about, that is a movement from the bottom upward?

A. Yes, sir.

Q. And of course, that only reaches up—is forced on eastward horizontally by the fact that the vertical movement pressing against the oil, or pressing against the liquid above it causes a horizontal movement, isn't that true?

A. No, it is the slope of your Georgetown contact that makes—as the water rises vertically, it naturally progresses eastwardly because of the slope of your Georgetown beds.

Q. All right. Horizontally, how far has the water approached from the west toward the east in the rear of that lease?

[fol. 418] A. I don't know, sir. The original—I had a map in the first case that showed the original water per cent, and I have one that I think now is the location of the contact water. From those maps in there possibly it has moved eastward, maybe in the neighborhood of 700 to a thousand feet.

Q. 700 to a thousand feet from the west to the east. It was in a period of——

A. On the contact point, yes, sir.

Q. Within a period of how many years?

A. That field, of course, was discovered in 1931—or '30.

Q. At that rate how long would it be before the water would move from the west horizontally to the Rowan & Nichols lease?

A. You could not make that estimation, Mr. Saye.

Q. Well, under present operating conditions?

A. Well, under present operating conditions, it would be impossible to make that estimation.

Q. Why?

A. Because of the diagram that I drew on the blackboard a while ago, as you flood—in assuming a constant rate of 691,000 barrels a day, you accelerate the water movement, and as you approach your cone of the field, you have less area to flood at the constant rate.

Q. How do you reach your conclusions as to when the Rowan & Nichols lease will be drowned out by water if you cannot figure the movement of the water?

A. We have the top of the sand on the Rowan & Nichols lease; it is contoured there as minus 3180 feet; so, in projecting a water rise to that point and then taking the slope of the Georgetown line already underneath that lease, and the eastern part of the lease, projecting across and triangulating, because I did not have access to the cross-section, I was able to compute where the bottom water [fol. 419] would be when Rowan & Nichols would drown out, and what part of the field was remaining when Rowan & Nichols had been drowned out.

Q. Now, you will have no vertical rise—vertical water under the Rowan & Nichols lease to rise and drown out the sand until it has moved horizontally from the west to that point, will you?

A. That is correct.

Q. Then you have to calculate how long it will be before that happens—before you will know when the lease even starts to being drowned out, don't you?

A. That is correct.

Q. Well, then, you just tell me you could not figure when that would occur—how long it would take?

A. Well, you have to give me some more factors there, Mr. Saye, and I can make the calculation for you; in other words, if you want to assume that this field produces at a constant rate——

Q. I said that to start with; I said under present operating conditions.

A. All right, if you want to make that assumption, I can show you how I calculate that.

Q. Why don't you just tell me?

A. Well, I can give you the figures on that.

Q. I didn't even ask you to calculate it; I asked you tell me how long it will be before it did that.

A. On that assumption that you have made of 691,000 ba rels constant rate of flow for the field, the minus 3180 co tour, you would flood with water which goes through the the Rowan & Nichols lease in 11.4 years.

Q. From top to bottom, completely flooded?

A. Yes, sir, that is 365 day years.

Q. Yes, sir. Now, I will ask you to take a proper [fol. 420] located one-half way between the Rowan & Nicho property on the west side, and state how soon it will flooded out.

A. Well, Mr. Saye, it would take—it would take som thing like six more hours to make that calculation: that what it took me last night to make this first one.

Q. You have no calculation on that?

A. No, sir, I would have to work that problem backwar from the east side to the other wells.

Q. Well, in view of the calculations on the Rowan Nichols lease over there, couldn't you give me some approx mate idea about that?

A. No, sir.

Q. None whatsoever?

A. No, sir.

Q. Well, under an order, now, that allows, we will sa Rowan & Nichols to produce 10 per cent of their reserves the total reserves in place——

A. Daily or yearly, or which?

Q. Currently.

A. Currently—that is, each day they get 10 per cent their reserves?

Q. Yes sir.

Mr. Moody: That is all in ten days.

Mr. Saye: Well, that is all right. I don't care what leng of time it is.

Q. But, say, we take a lease located like the Rowan Nichols lease; I don't care particularly about that lease and say that produces 10 per cent of its reserves. Now, you go back half way to the west side and the lease the produces 10 per cent of its total reserves currently, and t lease lies half way between the Rowan & Nichols lease a the west side of the field is exhausted within half the ti

that the Rowan & Nichols lease is exhausted, would that be [fol. 421] a fair division of oil between those leases?

A. If one is—goes out of production half as quick as the other one does, I wouldn't think so.

Q. Well, isn't it a fact that a lease that is located over toward the west would go off production and be drowned out more quickly than the Rowan & Nichols lease would?

A. Oh, yes, there would be lots of properties to the west of Rowan & Nichols that would go out before it does.

Q. Well, then, it would not be a fair basis to take all the leases, regardless of the situation, and figure out a formula, and let them produce what would result in their currently—currently producing their part of the reserves, would it?

A. If you will just take it and base it entirely on the reserves as they bear to the total, a formula that sets up allowable on that basis, it would not be fair, no, sir.

Q. In other words, a formula that would allow a company to produce 14.3 per cent currently of its—of the reserve—that is, oil in place under its property, if it had property that lay over there that—in the fairway, it would not only produce the oil from under that property, but would produce a large quantity of oil that would be drained in from the west, wouldn't it?

A. That, of course, would depend entirely on the location of the property, then.

Q. Well, take the Rowan & Nichols, if you want a specific location; I was just referring to the middle of the field, as compared to the west of the field, and then if that condition would not go on as you went eastward.

A. No allocation based strictly on the reserve, as it bears [fol. 422] to the field reserves produced currently, unless you had some situation there of property location, would not be fair.

Q. Well, isn't that what you are asking for?

A. No, sir.

Q. Aren't you asking to produce currently your part of the reserves?

A. No, sir.

Q. That your reserves bear to the total reserves in the field?

A. No, sir.

Q. What are you asking for?

A. We are asking for an opportunity to recover our oil or our fair share of the oil out of that field before our

property is drowned out with water, and stop contributing our oil to the properties that are lying to the east and toward the more densely drilled areas.

Q. But you do agree that any order that would permit—that would accomplish that fact, would have to take in and consider migration?

A. Yes, sir.

Q. From west to east, and make some structural corrections in favor of the west side properties, and the properties on the eastern extremity of the water line back west, before what you are asking for could be accomplished?

A. Yes, sir, and I have so insisted, Mr. Saye, since 1931, on that.

Q. Now, what about this proposition, say, we do away with the 20 barrels minimum on wells, and you place all the wells on a basis of their capacity to produce, what would be the result there with reference to physical waste?

A. You mean to just open the field up?

[fol. 423] Q. No, no. If you gave each well its allowable based on its capacity to produce.

A. You mean on the Commission's potential?

Q. On the actual potential of the well.

A. On the actual potential of the well?

Q. Whatever it might be, the capacity to produce, assuming that those factors would be applicable——

A. You have got to assume further that the top allowable would be such as physical waste would not be created in the field? You make that further assumption?

Q. Well, you can do that if you want to.

A. Well, it completely changes the problem, Mr. Saye.

Q. Well, all right; take that assumption, and then tell me what it is.

A. All right. Now, we assume—if this is not the right assumption—I don't know whether I am following you or not; if we assume first, that the field is drilled just the way it is now, and that it is producing on a 400,000 barrels a day allowable, seven days a week; and that was based on actual potentials with the present well density that is in effect over there now, and the drilling pattern of the field, there could be no possible way in the world you could get equity in there.

Q. The only reason for that is because you would get too much oil?

A. Sir?

Q. The only reason for that is because you would get too much oil?

A. No, sir; it would be the distribution of your production.

[fol. 424] Q. Well, if there was no proration in effect over there at all, each well could produce its capacity——

A. Now, you say——

Q. Now, if you wanted to put into effect a proration order that would not disturb anything—any method of producing, not disturb any rule of property that has stood there, and you just curtailed each well according to its capacity to produce, your order would not operate any more discriminately than the operation of the field without the order, would it; you would treat every man equally; you would just go in there and curtail his oil according to the capacity of his well?

A. No, sir, that would not follow at all.

Q. You don't think, then, that if you owned a 10,000 barrel well there in the field and Mr. Jones owned a 5,000 barrel well, and the Railroad Commission came along and says it is going to be necessary to curtail them enough in order to prevent physical waste. Well, if the Commission cuts your well to 5,000 barrels, and cuts Mr. Jones to 2,500, you say that would not be fair, and the Commission would change the status of the thing so as to keep you from getting your part of the oil?

A. No, sir.

Q. As a matter of fact, while you—the Commission would just curtail each one of you equally and leave the status as it was?

A. That would not work at all, Mr. Saye. It does not bear any relationship between curtailed withdrawals and open flow; they are not related in any wise.

Q. Well, I won't argue that with you. Do you know of any field in Texas that was operated under open flow conditions, whereby there was uniform density—drilling density?

A. No, sir.

[fol. 425] Q. You don't know of any field in the Woodbine sand when the property was operated under open flow, that there was a uniform drilling pattern that was followed?

A. No, sir.

Q. These irregularities in the spacing of wells in East Texas is just comparable to the other fields—there was no uniform drilling in any of the fields at that time, was there?

A. As far as I know, I have never seen one.

Q. Mr. Buck, do you recall the time when you testified in the Peoples case down at Houston?

A. Yes, sir, very well.

Q. You were employed by the Railroad Commission then, weren't you?

A. Yes, sir.

Q. The orders that were being attacked in that case were straight per well orders, were they not?

A. No, sir, there was one that was a straight per well order, and the other was 90 per cent per well and 10 per cent bottom hole pressure, if I remember correctly.

Q. That was in 1932?

A. In 1932.

Q. You had not gotten to the bottom role pressure proposition in 1932, had you? Didn't that come on after those first two——

A. No, sir.

Q. Didn't you testify in that suit that you considered the straight per well allowable for East Texas, in view of the size of the field and the conditions which existed over there, the most just and equitable order that could be put into effect in that field?

A. No, sir.

Q. You did not testify to that?

[fol. 426] A. No, sir.

Q. Didn't you testify in that case that you considered that under a straight per well allowable of curtailment, that each man in the field would recover more oil out of his well than he would without the orders?

A. Yes, sir.

Q. That each individual would?

A. Yes, sir, I so testified to that.

Q. You admit that you testified that even a straight per well allowable would do no injury to a man that was—as compared with open flow?

A. No, sir, you are a little confused about that, Mr. Saye. I will tell you the conditions over there and why that testimony. The field had been opened and producing in excess of a million barrels a day, and it finally—the Railroad Commission came in there in September, '32 or '31 and had a top allowable on that field of somewhere around 325,000 barrels a day, and I testified at that time that a per well allowable with the top held at 325,000 barrels a day would

give everybody more oil over there, and would be more evenly distributed than if you let that field cock back at a million and a half barrels a day, the way it was being produced.

Q. Yes; and didn't you testify that it was impracticable to put into effect any kind of a proration order over there except a flat per well allowable, Mr. Buck?

A. Mr. Saye, I spent right at nineteen months trying to get the Railroad Commission to write an acreage order of proration in the East Texas oil field—right at nineteen months, attempting to do that very thing.

Q. Did you testify in that case anything that you thought—anything about that you thought acreage should be considered in proration?

[fol. 427] A. I don't remember whether I did in that particular case, or not, but I have testified in practically every case that the Railroad Commission ever had, that they should take in acreage and bottom hole pressure and sand thickness, and I attempted for nineteen months to get the Railroad Commission to do it.

Q. Now, Mr. Buck, you can just briefly tell me how the marginal wells are located in East Texas, and by that I mean this, are the marginal wells situated out to themselves, or is it very often the case that the marginal well is offset by a well that will produce in excess of what the marginal well produces?

Mr. Moody: Mr. Saye, may I try to keep that plan safe in the record. When you talk about marginal wells, you mean wells producing less than 20 barrels?

Mr. Saye: Yes, sir, I am talking about the one defined by the statute, in East Texas it is a well incapable of producing in excess of 20 barrels.

Mr. Moody: Well, that is what you are talking about?

Mr. Saye: That is what I am talking about.

Mr. Moody: All right.

A. You have in most instances such as that, Mr. Saye, one a well which is not capable of producing 20 barrels a day on the pump for the consecutive thirty days, you have some wells that are in isolated areas and some which are surrounded by wells capable of producing more than that.

Q. In other words, in many instances over there you will have a well that cannot produce 20 barrels per day, but

surrounding that well you will have—offsetting it, you will have wells that will produce above 20 barrels per day?

A. Yes, sir, that condition prevails over there.

Q. And you have pumping wells that will do that surrounding those marginal wells?

[fol. 428] A. It was my understanding that we were talking about pumping wells.

Q. Well, in some instances, of course, you have flowing wells—offsetting wells that are low enough on the pump to be marginal wells?

A. I don't know of any; there possibly is that condition, of course, but I don't know of that condition.

Q. But the marginal wells are in no sense set off to themselves as a class anywhere in the field, are they?

A. I think if you arranged the field according to sand thickness or according to contours, that you could put them all in the same classification and in the same area.

Q. Well, I mean as to their location in the field.

A. Oh, they are scattered all up and down the east side, and they are scattered all up and down the west side.

Q. And in many instances, in close proximity to other wells?

A. Yes, sir, most of the time.

Mr. Saye: That is all.

Judge Allred: Mr. Buck, let me ask you, if the East Texas field is so well defined and developed that you can estimate how much oil there is in place under any surface area, and how much the sand thickness is, and how much the porosity is, and so on, and how much recoverable oil there is, why is it that you have here and there those wells that are not capable of making 20 barrels a day, whether on the pump or not, which you testify are surrounded by wells that are flowing wells and are capable or producing much more?

A. In many instances, Judge Allred, those wells were completed with 3-inch casing; in fact, it was poor second-hand equipment; they were junk wells, to start with, and they were able to just get a few barrels out of them, with-[fol. 429] out going to some additional expense of equipping them. Now, to put them on a producing basis, maybe the offset wells and the reserves there would not warrant that amount of expenditure, and it is a salvage proposition in many instances; in other instances in the field we had—

particularly on the east side—a sand over there that I terms a robber sand. It had no oil in it at the beginning, but when we drilled through the oil producing sand into this lower sand, it acted as a blotter and soaked the oil out of the main reservoir, and retained it in this robber sand. Now, wells in later years completed in that never have been prolific producers; it is just a salvage proposition, and they never will recover over 10 or 15 per cent of the amount of that robber oil with which it has been saturated. Now, those wells will cut off in two or three days. Now, it could be that it is possible that immediately west of that well there could be a well drilled into the Woodbine section, and it would be a good well, while this well drilled into that trashy robber sand would not produce over two or three barrels a day; the sand just won't give it up.

Judge Allred: All right.

Mr. Baker: May I ask him another question?

Mr. Hart: All right.

Examination by Mr. Baker.

Questions by Mr. Baker:

Q. I want to get clearly what your idea is about the use of the reserves as—in fixing the allowable or in allocating the allowable between properties. Now, I believe that you said that the reserves—comparative reserves ought to be considered?

A. Yes, sir.

[fol. 430] Q. Now, you said that you thought an adjustment ought to be made for position on structure?

A. Yes, sir.

Q. Now, did you mean by that that because of the time element, that adjustment ought to be made in favor of those wells on the west side and in the fairway, because the oil is drifting up-structure to the east edge of the field?

A. That possibly could be done, in consideration of the time element, Mr. Baker. However, the problem and the formula, as applied, I think it would be simplified by considering the time element.

Q. Well, isn't it true under the existing order that more weight for sand thickness and more weight for bottom hole pressure are added in favor of the west side operators?

A. More weight for——

Q. Sand thickness and bottom hole pressure.

A. In the present order?

Q. Yes, sir.

A. No, sir, that is not true.

Q. Well, they assign an arbitrary 10 acres of sand thickness to the west side, do they not?

A. Yes, sir.

Mr. Moody: 10 feet.

Q. 10 feet?

A. Yes, sir.

Q. Now, they take the actual pressures that exist on the west side, do they not?

A. Yes, sir.

Q. Aren't those pressures higher on the west side, generally speaking, than on the east side?

A. Yes, sir, but that 20 barrel minimum weights out any- [fol. 431] thing you have over there. Now, if you take your formula there, 695,000 barrels, and apply that straight to the field over there, then the west side would be very much favored over its present position because of that additional sand thickness that it is being given credit for.

Q. Well, I believe you misunderstood my question, then; but I was assuming a situation in which the 20 barrel minimum or any per well minimum would be disregarded altogether.

A. Oh, well.

Q. And the proration factor used to distribute the 176,000 barrels would be applied to all of the allowable?

A. That is correct, yes, sir.

Q. Now, under those conditions, do you or not think the present formula, if the 20 barrel minimum or any per well minimum were forgotten altogether, would work out fairly well?

A. It possible would need some additional adjustment there, but it would be very close to it, yes, sir.

Q. Well, how could you make an adjustment that would take care of the disadvantage that the wells on the west side, say, and in the fairway suffer as compared with the east side?

A. Well, there are possibly several ways. I don't want to be in the position of recommending a proration order, but in the formula, taking the magnitude of diversity of pressures, say, for instance, there on the formula, by that the

west side is given an advantage over the east side from this formula. If a basic contribution to pressures were made, it would come more closely to approaching the proposition there of the west side property recovering its share of the oil. Now, that could be done in various ways. By the removal of the fictitious potential from the formula, and applying a straight sand thickness, and the pressure correction could more nearly approach that point.

[fol. 432] Q. Then you think by the application of these factors to all of the allowables in reasonable relation to each other, it would be possible for the Commission to write a reasonable order?

A. Yes, sir, I have taken the present allowable, without the 20 barrel minimum, so that I might get a bearing on what would happen, and although the Rowan & Nichols properties there are located in the fairway section of the field, and have a reserve of .0605 per cent, the 690,000 barrel allowable with a five barrel minimum will come pretty close to give a production rate equivalent to the reserves of Rowan & Nichols to the field total. However, properties to the west would fall about 30 per cent short of their reserve percentages. Now, taking a 400,000 barrel allowable, straight, without any minimum, we would get .06836, which would put us slightly above, but by making a little pressure correction in there, that adjustment could be made to where I think it would pretty nearly approach most of the conditions as they exist over there.

Q. You mean it would give ultimately to all of us, to each operator, approximately a fair opportunity to recover the oil he had in place?

A. With the exception, of course, of your western one-third of the field. Now, the condition is that in one situation they would possible lose fifty per cent of the oil, and in another situation, why, that could be reduced to maybe fifteen or twenty per cent; but they are always going to lose oil so long as that field is produced

Q. That is just a disadvantage it rally has?

A. Yes, sir.

Q. Which cannot be overcome.

[fol. 433] Mr. Baker: I believe that is all.

Judge Sibley: We will rest for five minutes at this time.

(Thereupon, at 10:30 o'clock A. M. a recess was taken until 10:45 o'clock A. M.)

Judge Sibley: All right, Mr. Hart.

Cross-examination.

Questions by Mr. Hart:

Q. Mr. Buck, Governor Moody had you to go through some calculations here for the purpose of showing how the Railroad Commission actually arrived at the allowable of any well in the field, in applying that formula, and you didn't mean to leave any impression with the Court, did you, that the Railroad Commission doesn't actually follow the formula in allocating the allowable to wells in the field?

A. No, sir, the application of it as to 25 per cent of the allowable oil, it is correctly worked with that formula.

Q. In other words, the employees of the Commission have been able to apply certain mathematical short-cuts to reach the same result, but the result is the same as if they went through the long process on each well of multiplying the acreage times the sand thickness, times bottom hole pressure, and so on for that well, and by multiplying those same factors for the whole field, and then for the proratable oil?

A. They had to do that first. I was in East Texas when that original calculation took place. There were over 150,000 individual calculations had to be made, but after you once get the constant, it is quite simple.

Mr. Moody: I believe we have got the thing written on [fol. 434] the board now, the correct formula, at the present time.

By Mr. Hart:

Q. The only point I want to make is the Commission actually applies the formula promulgated, and they have now arrived at certain factors that save time for them in computing the allowable for any well in the field?

A. That is correct.

Q. Now, Mr. Buck, you have testified on behalf of the Rowan & Nichols Oil Company in the trial which took place in this court about a year ago, didn't you?

A. Yes, sir.

Q. Do you recall a certain paper introduced as Plaintiff's Exhibit No. 2 showing certain estimates of recoverable oil in the field, and recoverable oil under the Rowan & Nichols

Todd "B" lease, and certain other calculations?

A. Yes, sir, I think I have a copy of it. I don't have the exhibit number, but I am sure I have a copy.

Q. All right. Refer to that exhibit number, please, sir, and state to the Court what was the estimate given in Plaintiff's Exhibit No. 2 before as to the total number of recoverable barrels of oil in the East Texas field in that exhibit.

A. If I have the same exhibit here, it shows 3,522,710,352 barrels.

Q. In that Plaintiff's Exhibit No. 27, which was introduced yesterday, the figure that you gave for the recoverable oil in the whole field is 4,628,054,299 barrels; is that correct?

A. Yes, sir.

Q. What percentage increase of the estimate which you gave a year ago in this Exhibit No. 2 is shown by the estimate which you gave yesterday? What percentage of increase is that in the amount of recoverable oil in the sand?

[fol. 435] A. It is about 113 per cent.

Q. How much?

A. Around 113 per cent. I believe that is correct.

Mr. Moody: Did you ask for the per cent of increase?

Mr. Hart: I asked for the percentage of the increase.

Q. You are going to let it stand at that, Mr. Buck? I want to be fair to you.

A. Whatever the percentage is there. It was raised from—right at a billion barrels.

Judge Allred: Your estimate has been raised in a year's time?

A. Yes, sir, one billion barrels.

Judge Allred: All right.

Mr. Hart: And you estimate that at being 113 per cent?

Judge Sibley: It isn't that, of course. He misunderstood you.

Mr. Hart: All right, sir. Now——

Judge McMillan: Let's get that straightened out.

Judge Sibley: We can figure it.

By Mr. Hart:

Q. Well, what is the percentage of increase? You have stated it was 113 per cent. It is actually not that much,

is it? I want to be fair to you, and let you get that straight

Judge Sibley: The increase was a billion over three bil lion; it will be 33⅓ per cent. Those are not the exact fig ures.

By Mr. Hart:

Q. Within a year's time, the estimate has increased tha much?

A. From those figures, Chart No. 27 shows revised origi [fol. 436] nal expected recovery of oil for the East Texa field.

Q. All right, sir. On your Plaintiff's Exhibit No. 2, whic was introduced a year ago, you have a figure for the produc tion of the field to that date of 1,304,730,000 barrels?

A. Yes, sir.

Q. The figure which you gave of production to January 1 1940, is simply that same figure that you gave a year ago plus the production during the intervening period; is tha correct?

A. No, sir, that isn't quite correct.

Q. Have you varied that figure too?

A. The first figure given January 1, 1939, of 1,304,703,00 barrels wasn't based on the same accumulated figures tha I used in this one. There were some figures that we ha then from A. P. I. figure combinations for that they de ducted the amount of oil that was estimated to be produce in excess of the allowable. This time I put it all in that could find.

Q. Well, how much hot oil did you add to your forme figure in order to arrive at this figure you gave us yester day of the production to January 1, 1940?

A. I couldn't give you that figure, Mr. Hart, because th other figures that I used for this 1,447,000,000 figure wa taken from the A. P. I. figures that included that in there and how much it is, I don't know.

Q. Is this figure you gave to January 1, 1939, in the tria a year ago, is that only allowable oil up to January 1, 1939

A. As near as I could determine, yes, sir.

Q. And you don't know how much hot oil you added t that in order to reach your figure of production to date tha you have there on the board of 1,447,821,384 barrels?

[fol. 437] A. No, sir, I don't.

Q. Well, on this exhibit—before I ask that question, do you have, Mr. Buck, the amount of oil, allowable oil that has been produced between January 1, 1939, and January 1, 1940?

A. No, I don't have that figure with me.

Q. Well, I don't necessarily care to have an exact figure. Could you tell us about how much that has been?

A. No, sir, I couldn't.

Q. All right, sir. Well, in this Exhibit No. 2 which you used a year ago in the Rowan & Nichols case, you had an estimate there of the barrels of recoverable oil in the whole field of 2,217,980,352 barrels; that is correct, isn't it?

A. Yes, sir.

Q. Now, on this chart that was introduced yesterday, Plaintiff's Exhibit No. 27, you have an estimate of the remaining recoverable oil in the field of 3,180,232,515 barrels; is that correct?

A. Yes, sir.

Q. Now, in order to compare the estimate that you made a year ago with the estimate that you have made today, you would have to deduct from your estimate of a year ago the amount of oil which has been produced during the year's time, would you not, in order to make a comparison of the two?

A. No, sir, you couldn't make that comparison because all of the figures have been revised as of January 1, 1940.

Q. I understand, but you couldn't compare any estimate of the amount of oil a year ago with the—of the balance of recoverable oil a year ago with the balance of the recoverable oil today without taking into account the amount of oil produced in the meantime, could you?

A. No, sir.

[fol. 438] Q. If you took that into account, your figure of 2,217,000,000 and so on, barrels of recoverable oil a year ago, would be reduced, would it not?

A. Yes, sir.

Q. To refresh your memory, isn't it true that there has been a production during the last year of allowable oil in the neighborhood of 140 million barrels; is that about correct or not?

A. It would be somewhere in that neighborhood, yes, sir.

Q. If we deducted from your estimate of a year ago of the balance of the recoverable oil in the field, what has been

produced since then, you would have a figure of a little over 2 billion barrels, wouldn't you?

A. Yes, sir.

Q. Something less than 2,100,000,000 barrels?

A. Yes, sir.

Mr. Moody: No, you would have 2,100,000,000.

Mr. Hart: Didn't I say two billion?

Mr. Moody: No; you said one billion.

Mr. Hart: It is 2,100,000,000.

A. I thought that is what you said.

Mr. Hart: I think that is what I said. That is what I meant to say.

Q. What is the percentage of increase during the year's time in the estimate of the amount of recoverable oil remaining in the reservoir in the whole field, the percentage of increase of your estimate now over what it was a year ago?

A. You mean the remaining matter of 3,180,000,000?

Q. Yes, sir, about two billion?

A. Yes, sir.

Q. That would be about a 50 per cent increase in a year's time?

A. Yes, sir.

[fol. 439] Q. Now, on this Exhibit No. 2, there are certain other estimates I want to ask you about. I believe you said in response to questions that Governor Moody asked you, that the Rowan & Nichols Todd "B" lease is located generally in the same section of the field as the Todd "A" lease?

A. Yes, sir.

Q. In fact, they are only a few hundred feet apart; isn't that correct?

A. Yes, sir.

Q. Is the sand underneath the two leases substantially the same?

A. Substantially the same, slightly less on the "B" lease than on the "A".

Q. Are the other characteristics of sand about the same on the two leases; that is, porosity and permeability and the amount of connate water? Are they about the same?

A. Yes, sir.

Q. Bottom hole pressure about the same on the two leases?

A. Yes, sir.

Q. Position on the structure substantially the same?

A. Yes, sir.

Q. What do you estimate to be the net effective sand under the Rowan & Nichols Todd "A" lease under your estimate you gave yesterday?

A. 93 feet.

Q. Under your exhibit which you introduced a year ago, the estimate you gave of the net sand under the Rowan & Nichols Todd "B" lease was only 65 feet of sand; isn't that correct?

A. Yes, sir, according to that exhibit, that is correct.

Q. Well, about what percentage increase, assuming the leases are substantially the same, about what percentage increase in your estimate of net sand has there been since a year ago?

A. About 30 per cent.

[fol. 440] Q. About 30 per cent. Now, yesterday you estimated the average net sand thickness in the field is about 37.86 feet; is that correct?

A. Yes, sir.

Q. A year ago what was your estimate of the average net sand thickness for the field?

A. 28½ feet.

Q. All right, sir. How much have you increased the estimate over a year ago?

A. Right in that same proportion of 30 per cent.

Q. In that same proportion of 30 per cent?

A. Yes, sir.

Q. All right. There hasn't been any actual change in the net effective sand under the Rowan & Nichols Todd lease or the Rowan & Nichols Todd "A" lease?

A. No, sir, a change in our information, not in the physical facts of the lease.

Q. The change has been in your information over a year's time such as to cause you to vary your estimate over a year's time of 30 per cent; is that correct?

A. Yes, sir.

Q. Now, Mr. Buck, you made certain estimates on that chart about the number of years it would take to produce the oil in the field, and the number of years it would take to produce the recoverable oil under the Rowan & Nichols tract?

A. Yes, sir.

Q. First of all, I want to ask you about those figures up there about percentage in depletion. That figure of 31.28 per cent, depletion in the whole field, represents, does it not, that there is actually that much less oil underneath the field now than there was originally; isn't that correct?

A. Recoverable oil?

[fol. 441] Q. Yes; that much less recoverable oil under the field now than there was originally?

A. Yes, sir.

Q. There are—is that the figure of 31.28 per cent, in your judgment, your opinion, substantially the same percentage as the percentage of depletion in the number of acre-feet of net effective oil sand up to the present date?

A. Yes, sir.

Q. All right. Then, you have got there right opposite that figure of depletion a per cent on Rowan & Nichols lease?

A. Yes, sir.

Q. Has there been any depletion in net effective oil sand under the Rowan & Nichols Todd "A" lease up to the present time?

A. In saturated oil sand?

Q. In net effective saturated oil sand.

A. No, sir.

Q. There is the same amount of net effective saturated oil sand under the Rowan & Nichols lease today as there has always been?

A. That is correct, or substantially that.

Q. If you take the recoverable oil that is in place underneath the Rowan & Nichols Todd "A" lease today, that amount of recoverable oil is the same, substantially, as the amount of recoverable oil which was in place beneath that lease originally; isn't that correct?

A. If the field is shut in, yes; if the field is produced, no, sir.

Q. You said there is the same net effective oil sand under it as there has always been.

A. Yes, sir.

[fol. 442] Q. And that net effective oil sand is saturated wholly with oil and not at all with water at this time; isn't that correct?

A. Except with connate water.

Q. And the connate water is the same as it always was?

A. Yes, sir.

Q. There isn't any gas formed under the Rowan & Nichols lease?

A. Not that I know of.

Q. The Rowan & Nichols lease hasn't actually been depleted of the amount of oil underneath it in the same way that the field has been depleted 31 per cent; is that correct?

A. In oil in place, no; in recoverable oil, yes.

Q. When you speak of recoverable oil, do you mean the recoverable oil underneath the lease?

A. No; what the lease is going to get.

Q. When you have been speaking of recoverable oil, you included oil that will be drained to the lease from other leases to the west, didn't you?

A. And drained out from under the lease, or passing under that lease. It balances out.

Q. Your statements of recoverable oil, then, have not been based on recoverable oil in place beneath the tract, but on how much one lease might be able to drain somebody else?

A. No. There are two different things we are talking about, Mr. Hart. If the field is shut in and not produced at all, the Todd "A" lease, of course, would have just as much oil under it now as it ever had in place, but because the field has been depleted 30 per cent, and because the field is going to be produced in the future, the Todd "A" lease, although it has only recovered 20 per cent of its expected recoverable oil, it, too, has been depleted 30 per cent. It would be that much short of getting its recoverable oil at this time. That is the position of the oil in the field at this [fol. 443] time, and that will be aggravated as the field continues to produce.

Q. This 20 per cent is simply a calculation of the percentage of your estimate of the recoverable oil originally in place that has been produced to date from that lease; that is all it is, isn't it?

A. Yes, sir, that is correct.

Q. And then, it has no relation to any actual physical depletion in the number of acre-feet or in the amount of oil underneath the lease?

A. No, it doesn't relate to those two things at all.

Q. If you applied the same method of depletion that you have applied to the Rowan & Nichols lease on that chart there, you could figure out that almost any lease on the east side of the field there could be depleted, although it still had

the same amount of oil under it that it originally had, because it had produced part of its oil?

A. Some of those leases have been depleted 200 per cent and have still got as much oil as they ever had.

Q. According to your way of figuring, there are some leases over there that have been depleted 200 per cent?

A. Yes, sir.

Q. I didn't know you could deplete anything more than a hundred per cent.

A. Some of it has been depleted 200 per cent, and still has as much oil as it had originally.

Q. According to your way of figuring, a man can be depleted 200 per cent, and still have as much oil in place as he ever had under his lease?

A. In some properties. You couldn't do that in Rowan & Nichols properties.

Q. Now, you made, as I say, certain calculations of how [fol. 444] long it would take Rowan & Nichols to produce your estimate of their recoverable oil, and how long it would take the field to produce your estimate of the recoverable oil now remaining in the field, on the assumption that the field would continue to produce at the same top allowable?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir, that is correct.

Q. All right. Let's continue that assumption. If the field is produced at 691,000 barrels a day, say, disregarding shutdowns for the time being, there will be certain portions of the field that will be drowned out by water, will there not?

A. Yes, sir.

Q. And, as I believe Judge Sibley pointed out, there will be fewer wells to divide up the top allowable by, won't there?

A. That will be correct.

Q. Well, if you keep, then, the 691,000 top allowable, and you keep the 20 barrel minimum or base allowable, the percentage of the proratable oil will be constantly going up because of the fact that you have fewer wells to take the 20 barrel base or minimum allowable; isn't that true?

A. On that assumption, that would be correct, yes, sir.

Q. On that assumption, that would be correct. You were not making an assumption that the Commission would keep

a 20 barrel base or minimum allowable from now on when you made these figures, were you?

A. Yes, sir.

Q. You were?

A. Yes, sir.

Q. I will ask you if you were not making a different as- [fol. 445] sumption, and that is that the Commission would keep a 75 per cent per well allowable and 25 per cent proratable oil allowable?

A. Yes, sir, that will work out the same, Mr. Hart.

Q. Let's see if they do. You say that if the field is produced——

A. I beg your pardon. I understand now. If you maintain this 690,000 straight through, that wouldn't be true.

Q. That wouldn't be true, would it?

A. No, sir, that is right.

Q. You based your calculations for the length of time it would take the field to produce the oil on the assumption, and you based your calculations of what Rowan & Nichols—how long it would take Rowan & Nichols to produce on a different assumption, didn't you?

A. No, sir.

Q. Let's see how it works out, now. You say if the field continues to produce at 691,000 barrels total allowable per day——

A. Yes, sir.

Q. —that part of the field to the west of Rowan & Nichols will be depleted?

A. Yes, sir.

Q. Will be drowned out by water?

A. Yes, sir.

Q. That will mean that a good many wells on the west will have to be abandoned, won't it?

A. Yes, sir.

Q. That will mean that there will be fewer wells to divide up the—to get the 20 barrels base allowable; isn't that true?

A. Yes, sir.

Q. That will mean that there will be a bigger percentage of the total allowable which will be allocated on the—which [fol. 446] will be proratable oil, rather than oil allocated on the ground of the base or minimum allowable?

A. If the allowable is maintained at 690, that is correct.

Q. That is what you assumed in these figures, wasn't it?

A. Yes, sir.

Q. Then, if the percentage of the per well allowable, as against the proratable oil allowable, will not continue at 25-75, if they keep a 20 barrel base or minimum allowable, then the amount of proratable oil will constantly increase, won't it?

A. Yes, sir.

Q. By your calculations of how long it would take Rowan & Nichols to produce their oil and based on the assumption, and in reply to what you said to Governor Moody, that the Commission would continue to prorate the field on a 75 per cent per well and 25 per cent per well proratable allowable?

A. Yes, that is correct.

Q. And that is the way it would work out if the Commission kept the 691,000 top allowable and 20 barrels allowable?

A. Yes, sir. Of course, the Commission couldn't keep that 690,000 allowable.

Q. Have you figured out how long it would take Rowan & Nichols to produce their recoverable oil, if the assumption I have made is true, taking your first assumption, 691,000 barrels per day from now on; then, the further assumption that the Commission is going to keep the base or minimum allowable at 20 barrels per day?

A. Yes, sir.

Q. Have you figured out how long it would take Rowan & Nichols, then, to produce their oil, if you make that assumption, and don't make it 75-25 per cent, but on the way it would work out if that was applied?

A. It would be impossible to make that calculation.

[fol. 447] Q. It would be impossible to make that calculation?

A. Yes, sir.

Q. Impossible to know just exactly what Rowan & Nichols would get?

A. Yes, because it would be impossible to produce the field at that rate.

Q. Impossible to produce it at the rate of 691,000 barrels a day?

A. When Rowan & Nichols is being drowned out, I think so.

Q. That is the assumption you have made on all of your calculations there?

A. All of those are relative, Mr. Hart. It doesn't make any difference if the field was cut to 300,000 barrels a day, as long as it is on a 25-75 ratio, Rowan & Nichols' ratio of depletion would be in the same ratio as the depletion of the field. That is the only comparative basis that could be made on.

Q. I am asking you to make that comparative basis.

A. Yes, sir, that is the only thing it can be made on.

Q. Instead of assuming the base or minimum allowable is going to be increased to 30 or 40 barrels a day, assume that it is going to stay at 20 barrels a day, and by reason of that, as you say, the amount of proratable oil is going to increase?

A. Yes, sir.

Q. You say it is impossible to calculate how long it would take Rowan & Nichols to get their oil, if that were done?

A. Yes, because I don't know how many wells will be drowned out. You will have to give me some other factors to make that calculation with.

Q. If you are going to find out whether Rowan & Nichols will get their oil, you have got to make a calculation to base [fol. 448] it on?

A. You have missed the point——

Q. Just answer my question.

A. I can't make that calculation you asked for.

Q. The only kind of calculation you can make is based on an assumption of 691,000 barrels per day total allowable from now on, and 75-25 distribution of that allowable from now on?

A. Or any other allowable that you might want, based on 75-25. It would be in the same ratio then.

Q. All right, sir, and yet you have stated that the 75-25 ratio wouldn't continue if the Commission kept the 20 barrels base or minimum allowable?

A. With the 690,000 barrel top, it couldn't do it, naturally.

Q. It couldn't do it. All right. I want to just get briefly some figures from you, Mr. Buck. Where do you put the average water table to date?

A. I haven't made any computation on that for quite some time, Mr. Hart. I couldn't give it to you in level.

Q. Didn't you even try to do that when you were calculating the amount of depletion in the field?

A. No, I based it on flooded acre-feet of sand.

Q. Do you calculate the flooded acre-feet of sand without knowing how much the water has risen?

A. You know what the withdrawal has been from the field, and this can be computed backwards.

Q. Your calculation is just based on how much oil has been produced, and then assigning a certain production per acre-foot of that and dividing the one into the other, and you get the depleted number of acre-feet?

A. Yes, sir.

Q. And your estimate of the amount of recoverable oil [fol. 449] per acre-feet is 927.4 barrels; is that right?

A. That is correct.

Q. Is that the production to date, or is that the production from now on or both?

A. That is my calculated estimate of what the over-all recovery per acre-foot will be for the field, projected over the entire life of the field. The recovery per acre-foot at this time is higher than that. We have evidences of core data where over 95 per cent of the recoverable oil—amount of oil, 95 per cent of the oil in the sand has been flushed out by the water, which would give a recovery in a tract of 1200 barrels to the acre-foot. So the early recoveries have been higher, but it is my judgment that the over-all recoveries per acre-foot will be somewhere in the neighborhood of 927.4 barrels.

Q. Do you mean to say, Mr. Buck, that the 927.4 barrels per acre-foot recoverable oil is the amount of recoverable oil beneath an acre-foot of sand anywhere you take it in the reservoir?

A. That would be an average for the reservoir, and by these calculations I have shown that to be the recovery under Rowan and Nichols tract; however, it is my judgment that their recoverable oil there would be higher, but I have taken that as the average for the field, Mr. Hart.

Q. I want to get the variations in that, Mr. Buck. How far off might you be on that, if you wanted to apply it to any lease in the field? Would you be off as much as 200 or 300 barrels per acre-foot?

A. In the western edge of the field where we have had depleted leases, and have taken some core tests, and in some instances in the north end of the field where we knew where [fol. 450] the water level was, and we went back in and drilled another well to the original water level, and we

found what the rise was, and later the effectiveness of the water flushing of that sand. Those—so that the appearances make that part of that earlier production within the neighborhood of maybe 1200 or 1250 barrels recovery per acre-foot, but that doesn't necessarily follow.

Q. All right.

A. That is, if the field depleted and you got that water head further removed from that effectiveness of that flushing action, that wouldn't continue sweeping the sands that clean, and so for that reason I have made an estimate not of one acre-foot of sand in the field, this one carrying 1260, and this one carrying 875, but I have taken 927 barrels as my calculation for what an average acre-foot of sand yield will be over the life of the field.

Q. Take that information you gave here of the original potential of 1250 barrels per acre-foot as against your average, you would be 30 per cent, wouldn't you, on the amount of recoverable oil underneath that lease?

A. That particular lease would produce 30 per cent more than the average of the field. That would mean, Mr. Hart.

Q. As you arrived at these figures, your estimate would be 30 per cent off?

A. I don't think so. That particular lease there in that particular area produced 30 per cent more than the average of the field, not that I am 30 per cent off in my estimate. I don't think so.

Q. Of course, if you take an average, it is just an average.

A. That is all.

Q. But if you are going to try to allocate oil on the basis [fol. 451] of recoverable reserves as against a minimum life, you are going to be as much as 30 per cent off?

A. If you apply 927 barrels to each acre-foot in the field, that is correct, Mr. Hart.

Q. All right, if you applied that average to some leases you might give them as much as thirty per cent more than the actual recoverable oil in place, might you not?

A. They would recover that much more than the average, that is true.

Q. Well, the question was this, there are some leases that have less original oil than that average you have stated there, and the fact that you applied that average, you might give them about thirty per cent more oil than they actually had in place, is that right?

A. Yes, sir.

Q. Well, I believe you spoke in reply to Mr. Baker of a certain formula you thought was a pretty good one, and I believe you said under that formula there would be some leases that would get only fifty per cent of their recoverable oil, so ne of them would get only thirty per cent, some of them might miss it by fifteen per cent and so on?

A. You misunderstood that testimony, counsel.

Q. What was that?

A. I testified that after various producing rates up there in the field, for instance wide open flow, that the west side or some of those properties would lose fifty per cent of their recoverable oil that they had in place.

Q. Yes.

A. Now, under this regulated flow, twenty barrel minimum or something like that, that we have over here now, those properties are only losing from fifteen to twenty-five per cent.

[fol. 452] Q. I see.

A. They are better favored than they would be under open flow regulation.

Q. All right.

A. Now, there are correcting parts of this formula that can still bring them closer to that oil that they might have, recoverable oil in place. However, that wipes out, then, the structural advantage that one property might have over another.

Q. Do you mean by structural position there, do you mean to say the leases on the east side, they naturally have a longer life and therefore ought to be allowed to recover a little more oil than they originally had in place?

A. I don't mean to distribute any of this oil or say what one should be allowed to produce over another. I am saying that you give me any set of circumstances you want to give me and I will tell you the effect of distributing that oil or what they had of recoverable oil in place.

Q. I want to get what you mean by structural position. Do the leases on the east side have a structural advantage by reason of the fact that they are over there on the east side where the top of the sand is high and where the sands are permeable and so on?

A. They have a structural advantage under regulated withdrawals. No structural advantage under wide open flow.

Q. And any method of regulated withdrawal would give them some structural advantage, is that correct?

A. Yes, sir.

Redirect examination.

Questions by Mr. Moody:

Q. Mr. Buck, with reference to the present estimated, re-
[fol. 453] vised original estimated recoverable reserves, as shown on Rowan & Nichols' Exhibit No. 27, as compared with the estimated recoverable reserves as stated in the trial of the prior Rowan & Nichols case, explain to the court or state to the court, please, why the change in those figures?

A. Well, in the first place you realize that we have a tremendous reservoir there to deal with, and the earliest maps that we worked with, and were accepted maps; delimited an area of this field of 133,000 and some producing acres. Now, the map that I am working with now and checking and the amount of leases that are paying taxes on producing leases in the East Texas field, those two things conform, and it shows a delimited area of 131,749 acres. In making the first calculations there we had some 400 Schlumberger logs, or between 400 and 500, and core records to work on in making all of the deductions that we thought were necessary in our first calculation, and we computed the total Woodbine section of the field was in excess of five and a half million acre-feet, and then we went further in these calculations and taking the data we had and we struck an average of sixty-eight per cent of that sand as being saturated with oil. So we made the calculation first on the total Woodbine section and secondly struck a straight average of sixty-eight per cent for that whole field as being saturated. Since that time and since the trial last February considerably more data has been made available, not only to the Railroad Commission but to various companies, and including me. Independent surveys of this condition over there have been made. I have made these calculations that are shown there and the Railroad Commission has made calculations that are within one-tenth of one per cent of
[fol. 454] these. Now, the Tidewater, the Shell, the East Texas Engineering Association and others have been working independently of each other and they have checked within one or two per cent of these figures. That is the

best we can do. If next year we had another thousand Schlumbergers to work with all of our estimates would perhaps be revised either upward or downward, but I believe that any ten or fifteen engineers working with this problem with the same data would come within one or two per cent of the same answer, and so long as we have the total field limits and the volume all corrections up or down are relative, and it doesn't make any difference.

Q. Then the difference in the figures is because of additional information in the way of records on how many additional wells that have been made available in the last year? Did you state that?

A. I had access to over a thousand Schlumberger logs that are indicated on this map. Quite a few of them penetrated the entire Woodbine section into the Georgetown. Quite a few others penetrated the entire oil saturated zone and went into the water. We were able to take those logs and deduct the amount of shale, foreign material, out of the total sand section, and the map that is on the board there now is made from net oil saturated sand and not Woodbine section. Each area inside the contour has been weighted and calculated and it came to this total of 4,990,350 acre-feet of saturated sand.

Q. And you say the Railroad Commission was within what per cent of that?

A. The Railroad Commission is 4,961,000.

Q. 4,961,000, and that is 4,990,000?

A. Yes, sir.

[fol. 455] Q. In any event, the changes in figures is due to additional information having been made available or obtainable within the last year?

A. That is correct.

Q. Now, if you drop back to the estimates that were in evidence a year ago as to the original or expected recoverable oil in the field and under the Rowan & Nichols tract, or base it on the figures obtainable a year ago, and what you have today, would the ratio be about the same in these revised figures?

A. Yes, sir, because in all instances we treated the Rowan & Nichols tract as average all the way through and applied those same correcting factors each time, so I think whatever base of calculation is taken the answer would be relative.

Q. Now, the next figure, the production of 1,447,000,000 from the field and 493,000 on the lease, those figures are with the figure Mr. Hart furnished, I think, the 140,000 for the last year, they are about the same?

A. Yes, sir.

Recross-examination.

Questions by Mr. Hart:

Q. Mr. Buck, you spoke of certain correcting factors that you have learned about since last year that caused you to change your estimates thirty per cent. Just what are those correcting factors or additional information you based the changes on?

A. Principally data we were able to accumulate in the past six months. If you recall, the Commission sent out a questionnaire to all of the companies asking them to fill out certain information similar to what the Humble did fill out. This resulted in a very free exchange of information during the last six months, although before that we [fol. 456] had had a good exchange it hadn't been free. We have a tremendous amount of statistical data on the size of the leases, the number of acres in the lease, the wells that are on the lease, core records, driller's logs, Schlumberger records and coring records, water percentages, and things like that, that have never been made available for a complete study of this field until the Commission asked for that in this questionnaire. Now, there have been some nine or ten independent calculations made on this. I have had occasion to, since making my calculations, check most of those, including Mr. Hundall's, the Humble's, the Gulf's, Tidewater's, the East Texas Engineering Association's, and the Sun Company's, and all of those calculations naturally, because of the free exchange of information, although worked independently, checked fairly closely, and it just happened that the additional data made available caused the raising of these figures some thirty per cent.

Q. Is that all?

A. Yes, sir.

Q. Here on Plaintiff's Exhibit No. 28, Mr. Buck, you show a red line there, which I believe you called the neutral line, and you said all places to the west recover less recoverable oil than was originally in place, and all places to the east would recover more, is that correct?

A. Yes, sir. That is, of course, based on the present allowable.

Q. Where is Mr. Fischer's lease located there with reference to that line? Is he going to get more or less of the recoverable oil originally in place under his lease, according to that map?

A. I will have to examine the map.

Q. All right. I think it is near the London townsite.

Mr. Moody: We had the description of it a minute ago. I think I can give you that, Mr. Hart.

[fol. 457] A. Mr. Hart, this is such a small scale map that I can't find the lease exactly, but it is located in the approximate vicinity as indicated by the pencil and marked with a red dot. Now, that lease would fall some six or about five thousand feet, or a little over a mile west of the line, and would fall in the category of the acreage that would suffer drainage by the eastward movement of the water.

Q. Do you mean to say, Mr. Buck, that Mr. Fischer's leases won't recover the equivalent of the original recoverable oil underneath that lease?

A. No, I think Mr. Fischer will get his.

Q. You think he will get his?

A. Yes, sir.

Q. Well, there are a good many leases like that to the west of that line you have drawn that are going to get more than the recoverable oil originally in place, aren't there?

A. Yes. You can find up and down that line isolated areas where there is very dense drilling and heavy withdrawals, that for that particular lease will give up more oil than it had originally, but the one hundred foot per acre withdrawal of the area would still suffer drainage to the east. In other words, one man in there gets more oil than he is entitled to, that is true.

Q. Why is that?

A. Under a scheme of giving in accordance as their per cent bears to the reserve——

Q. Well, you know Mr. Fischer is going to get more?

Mr. Moody: Let him get through.

Mr. Hart: Pardon me, I thought he was through.

A. The one hundred acre-feet per day withdrawal in that area is taken to the disadvantage of the surrounding one hundred acre-feet area, and the line indicates for the general

[fol. 458] part of the field that gains or loses. It doesn't attempt to divide it exactly. A man who has one-hundredths of an acre with two wells on it, you cannot say that man is not going to get his oil, because the forty-fourth day he produced he will have the recoverable oil that he had in place, his per cent that his reserves bore to the field.

Q. Mr. Fischer is drilled more densely than the average of the leases in that vicinity so he is actually going to get his oil, although he falls how many feet west of that line?

A. About 5,000 feet.

Q. About 5,000 feet?

A. Yes, sir.

Q. Well, how far west of that line that you have drawn is the Rowan & Nichols Todd "A" lease, about how many feet?

A. It is right at 3,000 feet.

Q. Right at 3,000 feet?

A. Yes, sir.

Q. Well, the leases to the west of that line, then, that are more densely drilled than the average of the leases in that same part of the field are going to have a better chance of getting their oil than the leases that are just drilled to the average of the field in that vicinity, isn't that true?

A. No. In comparison, Mr. Hart, we can say this here is a grocery store and there are a thousand people in here to get five hundred loaves of bread, and we are going to be turning up here five hundred loaves short. Now, there might be some man, instead of getting one loaf he might go in there and get six loaves, but we still wind up five hundred loaves short of this deal. That oil has been moved eastward by the eastward movement of the water.

Q. If you want to apply that to the leases as they actually exist and whether there is any relation between that and [fol. 459] the recoverable oil they originally had in place, that line wouldn't look like that, would it?

A. It wouldn't be a line then, it would be a bunch of circles and spots.

Q. That is exactly what I am getting at. And if you are going to correct that line to show the actual amount of oil recovered, especially as to leases that are more densely drilled than the average of the leases in that vicinity, you would have to move it westward as to some of them and maybe some of them eastward, as to the leases that are less densely drilled than that area, isn't that true?

A. That line could only represent, under the present allowable, what section of the field is gaining oil and what section of the field is losing oil. It couldn't in any way identify Mr. Fischer's property or other property similarly located west or east of that line.

Q. Well, it couldn't identify any properties that are west or east of the line?

A. That is correct.

Q. Well, it wouldn't have any relation, then, to the Rowan & Nichols lease, would it?

A. Oh, yes.

Q. Except to show that Rowan & Nichols are in the general vicinity where you say on the average they are going to lose a little oil?

A. Oh, yes. In the Rowan & Nichols situation and properties lying west of the line, considering the relation their reserves bear to the reserve of the field, will suffer in some thirty-six per cent, but it wouldn't ncessarily mean that if Mr. Rowan went in and drilled twenty-nine more wells [fol. 460] on his land and was permitted to produce a bunch of oil in there that that would be true. It only applies to him as to his particular position at this time.

Q. Well, he is a little more densely drilled than the average of the field, isn't he?

A. On surface acreage, yes.

Judge Sibley: Do you have another witness?

Mr. Moody: No, sir, I have no other witness. I only would like to show in the record, in view of Mr. Hart's question about the Fischer lease, the comparative number of acre-feet under his leases and his recoveries as compared with the Rowan & Nichols lease. It was stated, but they have not been proved.

Redirect examination.

Questions by Mr. Moody:

Q. Have you made a check of that?

A. Yes, sir.

Q. How many acre-feet of sand are there under the Fischer land?

A. 5,006.7.

Q. That is less than twice as much as the amount under the Rowan & Nichols?

A. Yes, sir.

Q. How much oil is the Fischer land allowed to produce per day?

A. 1,692.82 barrels per day, that is his allowable.

Q. That is somewhere around six or seven times as much as the Rowan & Nichols allowable?

A. Yes, sir.

Recross-examination.

Questions by Mr. Saye:

Q. Mr. Buck, is it your contention that Mr. Fischer would [fol. 461] recover just as much of the oil in place under his land if he would drill one well on thirty acres as if he would drill five wells on thirty acres, or more than one well on thirty acres?

A. Of course, Mr. Saye, a recovery would come right back to the manner in which the allowable is prorated between wells. Under any of the past or present orders of the Commission he would, of course, recover less oil at a well to thirty acres than he would a well to five, and he would recover more from a well to half an acre than he does a well to five.

Q. Do you know of any formula that could be adopted whereby he wouldn't recover more oil in accordance with the more wells drilled on his lease?

A. Mr. Fischer's lease?

Q. Yes, or any other lease over there?

A. Yes, sir.

Q. Why would he recover more?

A. Sir?

Q. What would make it different?

A. Put the allowable to his tract, not to the well. In other words, it wouldn't make any difference—say he had a five barrel minimum over there to his tract. He could take a half barrel or a fifth of a barrel out of each well or he could take it all out of one well.

Q. Do you contend that one well on thirty acres will recover as much of the recoverable oil in place as four wells drilled on the thirty acres would?

A. That, of course, would depend entirely on the method in which it is prorated, the way it is distributed in the field.

Q. Do you know any way in which you can recover all of the original oil in East Texas by drilling one well on thirty acres?

[fol. 462] Judge Sibley: There are not any drilled in that way. Why should we worry about that? Everybody agrees there are plenty of wells to do the draining. Whether or not this formula gives them an undue advantage is about the only question in the case.

Mr. Saye: Your Honor, I think the question is if a man has twenty acres——

Judge Sibley: Let's not argue. Just ask the questions, we will save time.

Q. Will you answer that, Mr. Buck, will he recover just as much oil through one well as he will five wells, on thirty acres?

A. No, not under any plan of proration you have over there.

Q. Not under any plan of proratio

A. That has been in the field to date.

Q. Will he under any plan you suggest, or what plan would he recover it under, if you say he would?

A. He possibly could maybe not on a well to thirty acres. A well to twenty acres or twenty-five acres with an allocation there for reserves, based on his per cent of the field total and corrected for pressure, it could be done.

Q. Then do you think one well will drain from twenty to twenty-five acres?

A. If the pattern of the field was that, I believe so, yes.

Q. But that pattern would have to have been adopted when the field was started, and the field practically uniformly drilled, wouldn't it?

A. Oh, yes.

Q. To accomplish that result?

A. They would have had to have a more or less uniform pattern.

Q. And you can't base an order on any such pattern as that at this time?

A. Not if you take every well that is over there you couldn't, no.

[fol. 463] (Witness Excused.)

Mr. Moody: That is all, may it please the Court, from the Rowan & Nichols Oil Company, and we press our application for an interlocutory injunction, and submit the case on its merits.

Judge Sibley: Mr. Baker, are you ready to wind up yours?

Mr. Baker: I believe Mr. Hart wanted to ask Mr. Sorenson some questions, and then I wanted to submit some documentary evidence.

I. L. SORENSON, was recalled for further recross-examination, and testified further as follows:

Recross-examination.

Questions by Mr. Hart:

Q. Mr. Sorenson, I asked you, among other things, for your figures on the current number of acre-feet under the Humble leases. Now, what is that figure?

A. What is that?

Q. That is No. 3 there.

A. 595,277 acre-feet.

Q. Now, you have here under your No. 4, what is that? Is that the variations in the amount of shale on the west side of the field, as shown in your cross sections, beginning with AA and running through GG?

A. Yes, sir. I understood your question as a measurement of the shale and sand in the sections across the field, and using the westernmost wells on that section.

[fol. 464] Q. Does that show the amount of variation in shale on those cross sections, in each of those cross sections, the lowest figure, is that the lowest percentage of shale there, and the highest figure, is that the highest percentage, or what is that?

A. No, I have listed each well that was used in the section, and this tabulation shows the exact amount of shale and sand that was encountered in those wells as shown by the electric logs, and I have the logs here for you.

Q. On your cross section AA, then, do you mean this is an average of the different wells that were shown on each of these different cross sections? You have a figure of a certain percentage of shale and sand. Now, does that apply to an average of the wells in that cross section, or just the wells that were shown on the east side, or what?

A. The west well.

Q. The west well?

A. I understood that was what you wanted.

Q. Then in your cross section AA there was thirty-six per cent shale and sixty-four per cent sand, is that correct?

A. Yes, sir.

Q. In your cross section BB there was thirty-six per cent shale—36.5 per cent shale, and 63.5 per cent sand?

A. Yes, sir.

Q. In your cross section CC there was five per cent shale and ninety-five per cent sand, is that correct?

A. Yes, sir.

Q. And in your cross section DD there was fourteen per cent shale and eighty-six per cent sand, is that correct?

A. Yes, sir.

[fol. 465] Q. In your cross section EE there was 8.9 per cent shale and 91.1 per cent sand, is that correct?

A. Yes, sir.

Q. In your cross section FF there was 8.1 per cent shale and 91.9 per cent sand, is that correct?

A. Yes, sir.

Q. GG there was 21.4 per cent shale and 78.6 per cent sand?

A. Yes, sir.

Q. Now, this is the percentage on the westernmost well on each of those cross sections you introduced, is that correct?

A. That is right.

Q. Now, under this No. 5 here you have a figure for the recovery per acre-feet in the past production of the field. Apparently that is based on the assumption that the water level—is that assuming that all of the oil was above the water level of minus 3320? Is that what that assumption is?

A. Yes, sir.

Q. Based on that you have a recovery per acre of 1,499 barrels per acre-foot to date, is that correct?

A. Yes, sir.

Q. That is a correct assumption to make, whether the oil was above the minus 3320 original water level or not?

A. I used that 3320 as an exact line. However, it varied somewhat.

Q. It varied up and down, is that correct?

A. Yes, sir, and the amount of oil in the sand section varied. There is oil below 3320, but the percentage of oil is so low that it will not make a commercial well at that depth. However, some oil will advance with the water and be produced, and that accounts for that very high figure.

[fol. 466] Q. In other words, this estimate of 1,499, in your opinion, is a reasonably accurate estimate of the amount of recoverable per acre-feet throughout the field to date, is that correct?

A. On the assumption as stated there.

Q. And you say that that is a reasonable assumption to make, is that correct, on the average?

A. I have explained the 3320 as being an accepted figure, but oil, some oil from below that point has been produced to account for that figure.

Q. Some of the oil was originally higher than that, wasn't it?

A. That has been produced?

Q. No, I mean that the water level in some places was higher than the minus 3320, wasn't it?

A. Perhaps it was.

Q. So if you take a 3320 you make an average and that is a reasonable assumption to make?

A. In the early days of the field we made that assumption.

Q. Now, you also have here that the Humble production to June 1, 1939, was 131,364,982 barrels, or you say 1,095 barrels per acre-foot, based on the same assumption, on the Humble leases?

A. Yes, sir.

Q. Now, do you mean by that that the Humble—that the sand under the Humble leases was less productive on the average?

A. No, sir, that merely means that our percentage of the allocation was less.

Q. Well, the average recovery per acre-foot was 1,499 barrels, is that correct?

A. Yes, sir, on the assumption as stated.

Q. All right.

A. In the answer.

[fol. 467] Q. And this figure of 1,095 barrels, how did that come about? Did you arrive at an estimate of the number of acre-feet depleted under the Humble leases and then divide that into the total production from the Humble leases and get 1,095, is that the way you got that?

A. Yes, sir.

Q. That is the way you got that?

A. Yes, sir.

Q. I believe you say here you have no record of the excess oil produced from the Humble properties prior to the time the Humble purchased them, is that right?

A. That is correct. We can get that figure from the Comptroller, but these—you have to trace the record and ownership of those leases prior to our purchase.

Q. Would that take some time to do it?

A. I am afraid it will, but I will be glad to do it.

Q. I won't ask you to do it at this time. Now, do you have here under No. 7—you have the figure for the amount produced from the properties purchased by Humble prior to the purchase, and you have the figure there of 1,911,523 barrels. Does that include allowable oil only, or hot oil too?

A. That is the oil that we have a record of by pipeline runs kept monthly from leases, all leases.

Q. Now, Mr. Sorenson, there was certain other things I asked you about. I won't necessarily ask you to get them, but there is one point, one thing I would like to ask you. I asked you in your opinion what was the probable recovery per acre-foot in the field in the future. Do you know what that is? Have you made any estimate of it?

A. Future production?

Q. Yes, sir.

A. Well, just an estimate, some 900 barrels per acre-foot. [fol. 468] Q. In your opinion, some 900 barrels per acre-foot?

A. Yes, sir, a conservative estimate.

Q. That is about 600 barrels per acre-foot less than has actually been produced to date, isn't it?

A. That is true, getting back to the assumption that the original figure is based on.

Q. Now, I did ask you for the number of abandonments that have taken place on the Humble leases and the decrease in the productive acreage from the Humble leases, if any. Is that impossible for you to get or not?

A: No. You asked for so many things, and we got——

Q. I understood Mr. Rauhut was taking them down, and I thought you had a list of them.

A. This is all I have on the list, but I will find those wells for you.

Q. Well, I don't want to ask anything unreasonable of you. Can you get it without too much trouble? I would like to have an accurate figure on the abandonments on the

Humble leases and the number of acres you have taken off your list of productive acreage, if any.

A. I believe I can get that for you without any trouble.

Q. Now, Mr. Sorenson, on further cross-examination I want to ask you about your testimony in another case. Do you recall testifying on behalf of the Humble Oil & Refining Company in cause No. 59,295, in the 98th District Court of Travis County, Texas, entitled Humble Oil & Refining Company vs. Railroad Commission of Texas and others, which trial began on June 6, 1938? Do you recall that case? Do you recall testifying in that case?

A. I testified in that court, but I can't identify the case by those numbers. Who else besides the Commission was it [fol. 469] against?

Q. I don't have that now, I don't know. Well, let me ask you do you recall testifying in that court at about that time in response to questions by Mr. Rauhut, the attorney for the Humble Oil & Refining Company?

A. I perhaps was there. I don't recall the case particularly.

Q. Well, let me ask you if you didn't give this testimony, as shown here by the Stenographer's notes. I will ask you if you didn't testify this, and I am reading here from the stenographer's notes, with reference to the East Texas field: "The thinner sand areas to the westward if allowed to be drilled to the same density as the thick sand section would be a fair proposition because the lower structure wells would be drowned out at an earlier time and the thick sand section wells would produce longer and thereby recover their fair share of the oil." Do you recall testifying to that?

A. Yes, sir, that was based on uniformity of drilling.

Q. All right, and it was also based on the proration formula which was then in existence, which was substantially a per well allowable, isn't that true?

A. Yes, sir.

Q. Then I will ask you the following question, ask you if the following questions were not asked you and if you didn't give the following answers: "Q. Then, according to your contention, one well in an area where there is 100 feet of sand will drain an area just as far as a well located in an area where there is ten feet of sand, all things being equal?

A. Yes, sir, the longer life will make up the difference.

Q. Does that apply to the east side of the field too?

A. It applies to the east side in the sands if they are higher on the structure and the permeable sands they will have a very long life, but beyond the fairway going east-
[fol. 470] ward the dense tight sands will have a shorter producing life. They will die out because not enough pressure there to shove any oil into the wells in the tight sand areas. They will die out sooner. That is being effected now. We are feeling that on a good many leases at this time."

Do you recall testifying to that?

A. Yes, sir, that is that narrow strip we have been talking about.

Q. All right, I will ask you if the following question wasn't asked you and you gave the following answer: "If you had a per well allowable and you were confronted with that situation where the wells were all producing practically the same amount, do you still say that the man who has the thick sand, the 100 feet of sand, with one well, is entitled on ten acres, is in just as fair position as the man who has one well on ten acres in an area that has ten feet of sand?

A. Yes, sir, I have explained that to you, that the thin sand section will be exhausted so much sooner."

Do you recall testifying substantially to that, Mr. Sorenson?

A. Yes, sir. We were talking about the uniformity of drilling.

Q. All right, just one more question. Was this question asked you, and did you give the following answer: "In arriving at the number of wells a man is entitled to drill in any given area you give no consideration whatever to the thickness of the sand, that is not a factor you would take into consideration?

A. No, I would consider the adjoining tracts to the lease in question. If you maintained that average you will get your fair share of the oil."

Was that question asked you and did you give that answer?

A. If it is in that record that is so.

Mr. Hart: That is all.

[fol. 471] Redirect examination.

Questions by Mr. Baker:

Q. Mr. Sorenson, you testified here with reference to the recoveries on the west side. Now, isn't it true that minus 3320, taken as the average level at which you will get pipe-line oil, if you complete a well to that depth?

A. If you top the sand at that depth.

Q. Now, is it or not true that below that level there was quite a bit of oil—saturated, mixed in with the water?

A. Yes, sir. It is not a sharp line of demarcation. It is a gradational zone.

Q. A gradational zone. Is that zone ten or more feet wide, in your estimation?

A. Yes, sir, we found saturation below 3320. However, a well completed below that point will not make a clean oil well.

Q. I believe Mr. Moore estimated that the probable actual recoveries per acre-foot of sand depleted was 1,100 barrels instead of the figure here quoted. Do you agree with that or not?

A. Yes, sir, I agree with that.

Q. And the difference, you think, is made up by oil that came from below the place——

Mr. Hart: If the Court please, this is still his witness. We object to his leading and telling the witness what he wants him to testify.

Judge Sibley: It is rather leading.

Mr. Baker: I was doing that to get over with it. It was leading, Your Honor. I will withdraw the question.

Q. Do you or not believe that this oil coming from the deeper zone accounts for the difference?

A. Yes, sir.

Q. Now, I want you to look at this table, Mr. Sorenson. [fol. 472] I am afraid I will have to look on the table with you in order to ask the question. Are you familiar with that table?

A. Yes, sir.

Q. What does that table show with reference to the average recovery per acre-foot of sand depleted in the field up to this time?

Mr. Hart: He hasn't yet testified that those are his estimates and that he believes them to be correct, and I don't know whether they are his or Mr. Moore's.

Q. Will you examine that, please? Are you familiar with the estimates there, recoveries per acre-foot?

A. Yes, sir.

Q. Do you believe they are correct, from your own knowledge?

A. Yes, sir.

Q. Now, what is your estimate of the past recovery per acre-foot of sand depleted, assuming that the water level was minus 3320?

A. 1,499 barrels for the field as a whole.

Q. What would the comparable figure be for other operators besides Humble in the field?

A. 1,561 barrels per acre-foot.

Q. Would Humble be on the same comparable basis?

A. 1,095 barrels.

Q. What is the difference between those two, how much?

A. 466 barrels per acre-foot.

Q. 466 barrels per acre-foot?

A. Yes, sir.

Q. What does that mean with reference to drainage from the Humble properties?

A. There has been a drainage to that extent.

Q. How many acre-feet of Humble sand to you figure have been depleted?

[fol. 473] A. Humble has had 120,026 acre-feet drained.

Q. Now, if you multiply that by 466 barrels per acre-foot, what will that amount to in barrels?

A. 55,932,000 barrels.

Q. Will you state whether or not, in your opinion, that is a fair representation of the net amount of oil that Humble has had drained from under its leases up to this time, approximately?

A. Yes, sir, I think it is a reasonable figure.

(The Court then, at 12:05 p. m., Thursday, February 15, 1940, was recessed in this case until 2:00 o'clock p. m. of the same day, when the following proceedings were had:

[fol. 474] Thursday, February 15, 1940.

Afternoon Session: 2:00 o'clock

Mr. Baker: I have no further questions, Your Honor.

Judge Sibley: Any questions, Mr. Hart?

Mr. Hart: No, sir, I don't have any.

Judge Sibley: Well, I believe that completes the case of all the three complainants.

Mr. Baker: I want to introduce some documentary evidence at this point, Your Honor.

Judge Sibley: Are you ready with that now?

Mr. Baker: Yes, sir.

Judge Sibley: All right.

Mr. Baker: This is on the issue as to whether or not the Humble Oil & Refining Company used due diligence prior to filing suit.

I wish to introduce a copy of Exhibit A of the Humble Oil & Refining Company's original complaint. I am not going to detail it in particular except to say that this protested against the allowable in June and ask for an adjustment of the allowable and such an adjustment as would give to the Humble Company its fair share of the oil, and requested a hearing on both—a hearing by the Commission, and an opportunity for the Humble Company to make the necessary proof, and then requested that the adjustment be made.

Judge Sibley: Was any action taken on it?

Mr. Baker: Sir?

Judge Sibley: Did the Commission take any action on it?

Mr. Baker: Yes, sir, the Commission held a hearing on [fol. 475] on August 16th following. At that hearing a mass of evidence was introduced and after the hearing was had and after the injunction in this case was granted at San Antonio the Commission issued its order of September 11, 1939, which, as the Court knows, is substantially the same as the present order. Now, in the meantime, the Railroad Commission——

Judge Sibley: Well, it acted on this only indirectly, then?

Mr. Baker: Yes, sir.

Judge Sibley: By issuing a new order?

Mr. Baker: Yes, sir. In the meantime the Railroad Commission, during the month of August, sent out a questionnaire to the Humble Oil & Refining Company, in which it requested that the company furnish to the Commission certain information with respect to each of its leases in the East Texas field. Among other things, it propounded this question, which was No. 12: "What do you think the total allowable for the wells on this lease should be in order that you might recover your fair share of oil in the East

Texas Field, if the total allowable of the East Texas Field remains as it is at this time?" In answer to that inquiry—that related, of course, to a particular lease. The company stated in effect that it wished—that it ought to have that proportion of the field allowable which equalled the ratio between its——

Mr. Hart: Excuse me, Mr. Baker, are you going to introduce your letter which you sent with the questionnaire?

Mr. Baker: Yes, sir.

Mr. Hart: All right. That speaks for itself.

Mr. Baker: Well, I just wanted to state the substance of it into the record. It suggested pro-ration on the basis [fol. 476] of the ratio between the number of acre-feet of oil sand in the field as a whole, and then it said the pressure factor may also be considered. "See covering letter." Now, in the covering letter this statement was made—by the letter of August 8, 1939 from the Humble Oil & Refining Company to Mr. John E. Taylor, Chief Supervisor, Oil & Gas Division, Railroad Commission. Among other things this letter stated: "In answer to Question 12, we have suggested the following formula:

$$\frac{\text{acre-feet of oil sand in lease x}}{\text{acre-feet of oil sand in field}}$$

field allowable. It is to be understood, however, that it may be entirely proper to apply the pressure factor or to consider the location of the lease on structure. There are other formulae which would probably give substantially the same result. It is our idea that whatever the formula may be, the object should be to prevent reasonably avoidable drainage between competing properties, which drainage is not substantially offset by counter drainage."

Mr. Hart: Mr. Baker, are you introducing the last paragraph of your letter, too?

Mr. Baker: Yes, I will introduce that. The last paragraph reads as follows: "Whatever its legal rights may be, the Humble Company, as a practical matter, would offer no objection to an order applying the formula mentioned above or another formula achieving substantially the same result and, in connection therewith, prescribing a reasonable minimum unit allowable." Now, the Railroad Commission held——

Judge Sibley: By "unit" you mean well unit?

Mr. Baker: No, sir, that was not what we meant. We meant a unit—either an area unit or acre-feet unit and not a well unit.

Now on September 11th, 1939, the Railroad Commission held a State-wide hearing and at the State-wide hearing [fol. 477] Mr. Sadler, one of the Commissioners, stated this: "At this time, Mr. Chairman, I wish to read the proposed order on the East Texas Oil Field, in conformity with the agreement made by the Railroad Commission." That was in the opening of the hearing. Now, he read the proposed order, which according to my understanding, is the same as the order which was actually issued. Then Mr. Hines Baker, who is one of the Directors of the Humble Oil & Refining Company, and who was representing the Company at the hearing, got up in the open meeting and protested against the issuance of this order by the Commission. Now I am not going to take the time to read all of this to the Court except to—I will merely say that I wish to introduce this in evidence (referring to certified copy of excerpt of testimony at hearing before Railroad Commission in Austin, Texas, on September 11th, 1939), and to state that in here Mr. Baker very clearly stated the company's reasons why it didn't think the order should be issued. The principal reason was that it would not afford to the company an opportunity to recover its fair share of the oil.

The Railroad Commission, of course, has since issued other orders, and has not compiled with the request of the company to make a further adjustment of its allowable. As a consequence, as soon as it could do so, the company filed its second supplemental complaint in this action, complaining against the orders of September 11th and September 29th, and, of course, it is now prosecuting its suit as diligently as it can. I would like to introduce a certified copy of the excerpt from the record taken at the State-wide hearing on September 11th, which covers the Humble Oil & Refining Company's final protest.

Mr. Hart: Mr. Baker, of course this does not purport to be a transcript of everything that took place at that State-wide hearing, does it?

[fol. 478] Mr. Baker: No, sir.

Mr. Hart: Or everything that was introduced?

Mr. Baker: No, sir, it is just an excerpt.

Mr. Hart: You will agree, will you not, that the evidence that was heard on the application of the Humble Oil & Refining Company was introduced in evidence at this State-wide hearing, was it not?

Mr. Baker: Well, my understanding is that it was.

Mr. Hart: I might just state in reply to the question which Judge Sibley asked, that the Commission, as the result of this hearing, changed the order for the whole field; it did not change it just for the Humble but for the whole field.

Judge Sibley: Yes, sir, I understood it was just a——

Mr. Hart: It was a direct action on that, but of course they wanted to apply what they did to everybody in the field, and not just to the Humble.

Mr. Baker: Our complaint, of course—our continuing complaint is that they made a partial adjustment but did not make a sufficient adjustment.

Mr. Hart: If the Court please, Mr. Rauhut called my attention to one thing, and I am glad to state the facts. He said they are the facts, and I will take his word for it. The particular questions and answers which Mr. Sorenson made in the case, about which I asked him this morning, were questions which were asked by Mr. W. T. Saye, one of the attorneys for one of the other parties in the case, and were not questions asked by Mr. Rauhut.

Mr. Moody: Mr. Hart, may it be stipulated in the record as far as the Rowan & Nichols Oil Company is concerned, that since the order became effective in September, 1939 [fol. 479] down to the order of January 24, 1940, the method or plan of pro-ration in theEast Texas Field has been the same.

Mr. Hart: Well, Governor, that statement is so broad that I don't like to make it in exactly those terms. The same factors have been used, the number of shut down days have varied, I think; in the last order, the shut down days have been applied to the statutory marginal wells, and I think the top allowable has varied somewhat.

Mr. Moody: Well, the formula—I will put it that way, the formula for the distribution among wells for the field has been the same, has it not?

Mr. Hart: I think so.

Mr. Moody: Can it also be stated in the record that the Rowan & Nichols Oil Company filed a protest to these orders of the Railroad Commission?

Mr. Hart: I don't know exactly what form that was in. I think they did file a protest at one of the meetings. My recollections is Mr. Tilley introduced one up there.

Mr. Moody: All right, sir, that is satisfactory.

Judge Sibley: Are you through, Mr. Baker?

Mr. Baker: Yes, sir.

Judge Sibley: All right, Mr. Hart.

DEFENDANTS' EVIDENCE

Mr. Hart: Doctor Patten, will you take the stand, please?

[fol. 480] F. V. L. PATTEN, a witness for defendants, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Hart:

Q. State your name, please, sir.

A. F. V. L. Patten.

Q. Doctor Patten, are you connected with the Railroad Commission at this time in any capacity?

A. I am, in the capacity of Director of production.

Q. Doctor, what is your profession or occupation?

A. I am a Chemical and Petroleum Engineer.

Q. What training or education did you have for that profession?

A. I received the degree of Bachelor of Science in Chemical Engineering from the University of Texas in 1931, and the degree of Master of Science, in Chemical Engineering in 1932, and the degree of Doctor of Philosophy in 1935.

Q. Have you taught in any institutions in the State?

A. I have taught Natural Gas Engineering for one year in the Texas A. & I. College.

Q. What practical experience have you had during your connection with the oil industries in Texas, and particularly in connection with the East Texas Field?

A. I spent one year with the Commission between 1935 and 1936 as Chemical Engineer, and from June of 1937 until May of last year I was employed by the Commission as Research Engineer, doing research work in various fields in the State; since that time I have been Director of Production.

Q. In the course of your employment by the Railroad Commission of Texas have you had occasion to make a study of the East Texas Oil Field?

A. Yes, sir, I have.

[fol. 481] Q. State, in general, Doctor, what your information has been derived from—what records, if any, and what personal information you have made, and so on.

A. I have done considerable work studying the bottom hole pressure in the East Texas Field at various times, and the various producing rates, and in addition to that, made general studies of field conditions, including the water production from wells in the different portions of the field, and we have made a study of bottom hole samples taken from wells in the field.

Q. Now, Doctor, you have heard certain statements here about the East Texas Field being essentially a water drive field; is that correct?

A. In my opinion, it is.

Q. Now, have you made a study, and have the persons under you done work for the purpose of ascertaining the facts as to whether or not the enforcement of pro-ration in the East Texas Field has any relation to the prevention of physical waste in that field, or the recovery of a larger amount of oil from the reservoir than would have been recovered under open flow conditions?

A. I believe unquestionably that there has been and will be a substantially larger production from the East Texas Field because of restriction in production. Restriction in production at the present time has made it possible to produce something on the order of a billion, four hundred million barrels of oil from the Field while maintaining the pressure in most of the field above the saturation pressure, that is the pressure at which gas begins to come out of solution and it is, I believe, well established that the maintenance of gas in solution does, particularly in a water drive field, increase the efficiency of the flushing action of the water drive and the water that replaces the oil.

[fol. 482] Q. Generally speaking, would you say, then, that throughout the field there will be a larger recovery of oil from the field by reason of the enforcement of pro-ration than there would have been under open flow unrestricted conditions?

A. Yes, I believe that unquestionably there will be a greater production from the field as a whole because of restricted production.

Q. Now, the restriction of the production from the field as a whole has caused a relatively slow drop in the bottom hole pressure, and has that any relation to the prevention of physical waste of oil?

A. I couldn't answer that question exactly as you have asked it. The maintenance of the bottom hole pressure in the field, at a point above the saturation pressure is important, or the maintenance of as much of the gas in the field in solution as possible is of extreme importance in getting the greatest amount of recovery, and restriction of production has made it possible up to the present time to keep the pressure in the field—in most of the field, except for some very small areas, above the saturation pressure.

Q. What was the average bottom hole pressure in the field at the time the field was first opened?

A. The average bottom hole pressure in the field at the time the field was first discovered was about 1625 pounds per square inch.

Q. What is the average bottom hole pressure in the field at this time?

A. Something on the order of about 1063 pounds per square inch.

Q. What is the pressure at which the gas will come out of solution in the East Texas Field?

[fol. 483] A. The figure which is—which has been generally accepted is 750 pounds a square inch, although our tests in the field did show that it was not exactly uniform all over the field; it appeared that in certain portions of the field it was somewhat lower than that.

Q. Doctor, has the Railroad Commission prepared and kept up to date, or substantially up to date, a chart which shows the relation between the production of oil in the East Texas Field and the maintenance of pressure in the field, or the lowering of pressure, as the field has been produced to date?

A. Yes, we have kept a chart constantly for the past several years, on which we have recorded the results of the monthly bottom hole pressure surface in the field while the field was being produced at varying rates.

Q. Do you have that chart here?

A. I don't believe that it is here, Mr. Hart.

Q. One of the boys has just handed me this chart. Is this the chart you are talking about, Doctor, the one we have here?

A. Yes, sir, that is it.

Mr. Hart: First I would like to have it marked, please, as Defendants' Exhibit No. 1.

(Thereupon the chart above referred to was marked as Defendants' Exhibit No. 1.)

Q. Now, Doctor, I want to get you to explain this chart and its significance, briefly, to the Court if you will, and perhaps if you will come over here and stand by it you can do it better than you can from the witness stand.

A. On this chart we have applied as a function of time the rate of production at different pressure intervals—[fol. 484] between different pressure intervals—that is, the average rate of production. The average bottom hole pressure is shown, as is shown by these different bottom hole pressure surfaces, shown in the upper of these graphs. The number of wells in the field is also shown on this chart, and the cumulative oil production is shown.

Q. All right, sir. Now, does that—beginning with what were or what time does the chart begin, over there on the lefthand side?

A. The chart begins in June of 1933.

Q. All right. Now, the top line then shows the bottom hole pressure—the average bottom hole pressure of the field at the various dates shown on the chart, is that correct?

A. Yes, sir, that is correct.

Q. All right. Now, what does the bottom line there show?

A. The heavy line here shows the average daily production in these intervals between each pressure surface.

Q. Is there anything on the chart which shows the total production of oil during the time shown on the map?

A. Yes, the dotted line on the chart. Here, this red dotted line shows the cumulative production as estimated by the Bureau of Mines.

Q. Now, what does the chart there show to be the average bottom hole pressure in the field at this time?

A. The average bottom hole pressure as of February 8, 1940 shows 106.32 pounds per square inch.

Q. Has that chart been brought up to date as the—with respect to the total production from the field to date?

A. The cumulative production on this chart was brought up only until the end of 1938.

Q. Now, according to the figure on that chart at the pres- [fol. 485] ent time, how high, expressed in number of pounds per square inch, is the average bottom hole pressure in the East Texas Field above the saturation point at 750 pounds?

A. The average pressure is approximately 300 pounds per square inch above the average saturation pressure.

Q. Doctor, before we take that down, is there any other explanation you care to make about that chart?

A. This chart does show that producing at high rates of flow will, at least for a time, cause a drop in the bottom hole pressure; and similarly, if the field has been produced for a time at high rates, when the rate is changed to a lower rate the bottom hole pressure will increase. For example, during August the field was shut in for fifteen days, and during those fifteen days the bottom hole pressure increased some forty-three per square inch.

Judge Allred: Will you indicate that on your chart?

A. Yes. It varies here, and at various times when we have reduced the rate of production, and it shows that it does cause, at least for a time, an increase in the bottom hole pressure. And similarly, an abrupt increase will cause for a time a decrease: We do know that at constant rates of production, why, you may get a rapid decrease in the bottom hole pressure. It does tend to level off, but at a lower value, if you produce at a higher rate. As for example, after we opened the field up after the fifteen day shut down the bottom hole pressure decreased very rapidly at first, and it has come up here to level off at a value about 1,063 pounds per square inch, as shown in the last part of this chart.

Q. Doctor, then assume a continued maintenance by the Railroad Commission of substantially the same top allowable as in the present order. With that assumption, in your [fol. 486] opinion, is there any reasonable danger that at any time soon the bottom hole pressure will decrease throughout the field so as to cause any appreciable amount of physical waste of oil?

A. I wish that I could answer that question very definitely, Mr. Hart, and I think I can if I may use this other chart.

Mr. Hart: Very well. We will ask that that be marked Defendant's Exhibit 2.

A. The principal problem which we have confronting us at the present time with reference to the maintenance of bottom hole pressure in the East Texas field is the amount of water which is being produced and the rate at which water production is increasing. At the time we made these calculations which are shown on this chart the water production had been increasing for a period of some two or three years in a semi-logarithmatic manner, or what appeared to be that, and on the basis of that data, and we extrapolated that data and we got on a semi-logarithmatic paper several years into the future. Now, several years ago, I believe it was 1936, an article was published in which there was given a mathematical relationship which did relate to the rate of production, the total production, from the East Texas field, and the average bottom hole pressure. Two such equations were developed about the same time, one by Hurst of the Humble Oil & Refining Company and the other by Muscrat of the Gulf Research Development. Both of these equations were based on the assumption that the water drive in the East Texas field was due to the expansibility of the water in the great Woodbine reservoir. Calculations which have been made using this equation over a period of several years have shown that the equation, that is, the bottom hole pressure that is calculated by this [fol. 487] equation, did check very closely; so it appears that knowing what data to put into the equation, it is possible to predict very accurately what will happen in the future. The difficulty which we have now, however, is determining what data to put in the equation. In the future on this chart here I have shown a relationship between bottom hole pressure and time at different rates of production. These calculations were made, incidentally, in November of 1938. They show the relationship between the bottom hole pressure and the time at a rate of production from the field of 2,660,000 barrels of oil per day. We have also calculated in the same relationship at a rate of 380,000 barrels of oil per day. Assuming that the water production did increase in accordance with the trend which it had shown up to that time, a similar curve was calculated at a rate of 432,000 barrels per day, assuming that the water production continued to increase as it had at that time. We also calcu-

lated the relationship between the bottom hole pressure and time, assuming—or at a rate of 432,000 barrels per day—assuming all of the water produced with the oil in the field was reinjected into the reservoir; that is this upper curve which I have shown here. Briefly, these curves show that at a rate of 2,660,000 barrels per day the average bottom hole pressure would have dropped to 750 pounds per square inch in about forty-five days at a rate of 380,000 barrels per day. Assuming that the water production increased along the same trend, the average bottom hole pressure would have dropped to the same value by about January of 1940, and at a rate of——

Q. You said 1940. Did you mean 1944?

A. 1944, excuse me. And at a rate of 432,000 barrels per day, if the water production continued to increase and none of it was reinjected, the curve indicates that the average [fol. 488] bottom hole pressure would drop to 750 pounds in the middle of 1943. On the other hand, if all of the water were reinjected in the middle of 1943, the average bottom hole pressure would have been as high as it was at the time these calculations were made, or slightly higher in fact.

Q. About what is the average daily production, total production, from the East Texas field under the present proration order?

A. The daily average is about 400,000 barrels per day, or slightly over that.

Q. That is considering the shut down?

A. Yes, sir. And, incidentally, the estimated bottom hole pressure which we did estimate at that time, that was a year and three months ago, would be between these two curves here, and that would be a value slightly less than 1,070 pounds per square inch. Our present value is 1,063. So in a period of that time it has indicated we are following the trend indicated between these two lines.

Q. Doctor, at the present time could you or not answer this question: Is there any physical waste being caused in the East Texas field by reason of the maintenance of the top allowable at the figure at which it is now being maintained by the Commission?

A. Insofar as the pressure is concerned, I do not believe that there is any material waste caused by the maintenance of the top allowable at its present value.

Q. Now, you said that there are certain factors that are unknown as to the future that might influence the deter-

mination of how much total production of oil could be allocated without bottom hole pressures going down to the saturation point. Now, you mentioned the matter of the water production and the reinjection of water. Now, would [fol. 489] you state the facts briefly about that to the Court? And what efforts the Commission made to put water back into the reservoir?

A. The efforts which are being made, I think, perhaps, the operators should be given more credit for that than the Commission, because there have been a number of experimental water injection wells that have been drilled in the field. At this time there are some fifteen or twenty. They have a capacity up to more than 3,000 barrels of water per day. It is estimated at the present time that it would take between fifty and seventy-five water injection wells to return all of the salt water currently being produced into the Woodbine reservoir. I say it is uncertain, because we don't know how much will be returned to the reservoir.

Q. Assuming that the water that is produced can be returned to the reservoir, or substantially all of it or a large part of it, would it be possible to produce the field at the present top allowable of oil and not have the bottom hole pressure decline from an average of 750 pounds per square inch for many years in the future?

A. You mean the present daily average oil production?

Q. Yes, sir.

A. Yes, sir, our calculations show that definitely, that the bottom hole pressure could be maintained at approximately the present value for six or seven years more in the future; certainly that long, if all the water were reinjected.

Q. Well, based on your facts as to what is being done, what is your opinion as to whether or not the field can be—the top allowable can be maintained at approximately the present figure without causing any physical waste in the East Texas oil field for several years?

A. I can't answer that question definitely because of the [fol. 490] reasons that I have indicated. I will say this, and possibly this might throw a little further light on the matter—do you want to introduce this?

Q. Which plat do you want?

A. This one.

Q. What map are you now pointing to, Doctor?

A. The chart or map that I am pointing to is a combination of the Railroad Commission's sand thickness map over

which has been superimposed a bottom hole pressure map, showing the bottom hole pressure contours in the field. These bottom hole pressures were calculated to the face of the sand to give the actual pressure in the reservoir.

Mr. Hart: I ask that this chart be marked Defendant's Exhibit 3.

Q. Now, referring to that map you have described, and which has been marked Defendant's Exhibit 3, explain what is shown on that map.

A. This map shows that only in the area that is at the bottom here has the pressure dropped below the saturation pressure. They developed a small area down in the southeastern corner of the field that is the only appreciable area in the field where the pressure has dropped to the saturation pressure. That area, incidentally, is one in which the sands are of low permeability, and for that reason the pressure is not replenished from the water drive on the west as well as it is in other parts of the field. The pressure contours across the field show that the pressure of course is highest on the west and lowest on the east. The minimum pressure on the east is in the neighborhood of 900 to 950 pounds per square inch. Now, we have determined by measuring the volume of oil saturated sand as indicated by this sand thickness map with these various pressure contours, what the [fol. 491] volume of oil saturated sand is at the present time at varying pressures below 760 pounds, and in 20 pounds per square inch intervals on up, and from that assumption —we think that it is a reasonable assumption because of our experience in the past few years—that the pressure gradients across the field all remain essentially constant in that portion of the field where gas has not come out of solution, even though the pressure on the field as a whole declines, we have constructed this chart which is shown here.

Mr. Hart: We want to have that marked Defendant's Exhibit 4.

Q. Doctor, explain what that chart shows, please, Defendant's Exhibit 4, briefly.

A. This chart shows the relationship between the average bottom hole pressure as determined by our ninety-one key wells and the per cent of the original oil saturated sand below 760 pounds per square inch. It shows that at the present time we estimate that something like 1.4 per cent

of the original oil saturated sand has now declined below 760 pounds per square inch. Now, the saturation in that area is just slightly below that, and it shows that even though the bottom hole pressure in the field has declined from 1,625 pounds to its present figure, only 1.4 per cent of the field has dropped below the saturation pressure and only 1.4 per cent has gas beginning to come out of solution. It also shows that when the pressure does drop somewhere in the neighborhood of 850 pounds per square inch then a further decline in the bottom hole pressure will cause rapidly increasing amounts of gas to come out of solution in the field. This field, incidentally, is different from any of the other major oil fields that I know of in the state in that it is considerably under-saturated. In the normal oil [fol. 492] field when the pressure drops below the original pressure gas begins to come out of solution all over the field. Some gas comes out of solution, but in this field it is only in the extreme east that it has come out at the present time.

Q. Doctor, what is your opinion as to whether or not there will be any physical waste as long as the bottom hole pressure in the field is kept above the saturation pressure?

A. There will be no change in the physical properties of the oil so long as the bottom hole pressure in essentially all of the field is maintained above the saturation pressure, and for that reason there would be no physical waste caused by the decline in pressure.

Q. And you stated about how many pounds above that saturation pressure is the average bottom hole pressure at this time?

A. The average bottom hole pressure is 300 pounds per square inch above the saturation pressure.

Q. Now, Doctor, I believe Mr. Buck testified something about the method of production which the Commission has adopted of allowing 690,000 barrels, approximately, production on producing days and then having a certain number of shut down days. Now, would you explain how that has worked out with reference to the wells on the west side, and state whether or not in your opinion the method of production which is permitted under the present proration order has caused any waste in that respect?

A. The orders, the shut down orders which have been written for the East Texas field have provided that where it is shown that in order to prevent physical waste it is better

to produce the well continuously at reduced rates, permits will be granted to operate the wells in that manner. Most of the wells which make water on the west side are so operated under permits which are granted by agents of the Commission.

[fol. 493] Q. Where it is shown to the Commission that a well that is making water might be lost or waste would result if it is shut down, has the Commission granted such well the right to produce daily at a reduced figure, which will average up to the same thing they would get if they produced the regular allowable on producing days and shut down on the shut down days?

A. Yes, that is true. The practical problem is this, in some wells that produce a high per cent of water, if they are required to shut down for say a period of a day it is necessary to pump them for some time before any oil is produced from the well. Such wells can best be operated by producing continuously, and permits are given to do that.

Q. Now, Doctor, you are familiar in a general way with the proration order of June, 1939, and the proration orders generally which were in effect prior to the promulgation of the proration order of September 11, 1939?

A. Yes, I am familiar with that.

Q. Do you recall about how much oil was prorated above a twenty barrel per well allowable under the old order on the basis of the factor of potential?

A. My recollection is that it was something between seven and ten thousand barrels per day.

Q. Now, under the order of September 11, 1939, and under subsequent orders, about how much proratable oil has there been to distribute on the basis of the factors which are stated in the proration formula?

A. You mean on the basis of the sand thickness, acreage and potentials?

Q. Sand thickness, acreage, bottom hole pressure and potential.

A. About 176,000 barrels.

[fol. 494] Q. Doctor, what part of the field and what kinds of tracts got the benefit of that increase in the allowable by the application of the present formula of the Railroad Commission?

A. I don't believe I understand quite what you mean by that question, Mr. Hart.

Q. Did or not the larger part of this proratable—this increase in the proratable oil go to the tracts in the center of the field with the thick sands, or did they go to the tracts on the edges of the field with the thin sands?

A. The tracts, or the wells I will say, located on very small tracts or in very thin sand sections where the potentials were low have, on the schedule at the present time, substantially the same allowable as they had under the previous order. Under the previous order they got twenty barrels. They now get say from twenty-one—from 20.05 to 21 barrels. The wells located on the larger tracts and in the center of the field get considerably higher allowables than they obtained before, ranging up to more than 50 barrels per well.

Q. Under the old proration order what was the maximum allowable per day assigned to any well in the field?

A. I don't recall the exact value. I think it was something on the order of twenty-five or twenty-six barrels.

Q. Under the present order what is the maximum allowable assigned to any well in the field, approximately?

A. It is slightly in excess of fifty barrels.

Q. Has the Railroad Commission prepared a graph which shows the relative method of distribution of the allowable under the old order, that is, the order which was in effect prior to the order of September 11, 1939, and the distribution of the allowable which takes place under the present order?

A. They have, yes, sir.

[fol. 495] Q. Is that the top chart which is shown over there on the board?

A. It is.

Q. Would you go over to that, please, and explain that?

A. Yes, sir.

Mr. Hart: We ask that this be marked Defendant's Exhibit 5.

Q. Doctor, what is the black dashed line on that chart? What does that show?

A. The black dashed line shows, illustrates the distribution of allowable under the August proration schedule of the Commission, the August, 1939, proration schedule.

Q. Under this proration schedule approximately what percentage of the wells got exactly a twenty-barrel allowable per day?

A. This chart does not show the exact number. It was 19,000 some odd wells, or approximately seventy-five per cent.

Q. Of the wells in the field got exactly a twenty barrel margin, is that correct?

A. Yes, sir.

Q. Did they range from wells having one barrel per hour potential to wells having about 860 or 865 barrels per hour potential?

A. I believe 860 is correct, yes.

Q. Now, under the present order, as contrasted with that, are there any wells that get exactly a twenty barrel allowable?

A. I don't believe there are. If there are it is just two or three wells.

Q. Then under the old order that black line showed that a great percentage of the wells got exactly a twenty barrel allowable and then a comparatively very small percentage got a little above twenty barrels, is that correct?

A. That is correct. This chart shows that eighty-one per cent got between twenty and twenty-one; 7.65 per cent of [fol. 496] the wells got between twenty-one and twenty-two barrels per day; 7.07 of the wells got between twenty-two and twenty-three; 1.26 per cent got between twenty-three and twenty-four; .0035 between twenty-four and twenty-five; .0009 between twenty-five and twenty-six.

Q. What does the red line on that chart show?

A. The red line on the chart shows the distribution of the allowables in the field. That is, the per cent of the total number of wells having allowables in the different brackets from twenty and twenty-one on up to the maximum between fifty-one and fifty-two.

Q. Does that or not show that the allowable is distributed widely between the wells in the field? For example, what percentage does it show of the wells in the field getting an allowable of around forty barrels?

A. An allowable of what?

Q. About forty barrels.

A. About 60.9 of one per cent.

Q. What are some of the percentages there, without reading them all? State that to the Court.

A. Between twenty and twenty-one is 19.02 per cent of the wells; twenty-one and twenty-two is 10.33 per cent;

between twenty-two and twenty-three it is 7.51; between twenty-three and twenty-four it is .37; between twenty-four and twenty-five it is——

Q. Doctor, I don't believe it will be necessary to read all of those. Those figures appear on the chart and show the percentage of the wells in the field which received an allowable between those figures as shown on that chart, is that correct?

A. Yes, sir.

Q. Has the Commission prepared another chart which [fol. 497] shows the distribution of the allowable granted to the Humble wells under the new order and the percentage of their wells that fall in the different proration brackets according to so many barrels per day?

A. They have.

Mr. Hart: Will you mark that Defendant's Exhibit 6.

Judge McMillan: Are you going to introduce those in evidence?

Mr. Hart: Yes, sir, I want to introduce all of these in evidence. We now offer all of these exhibits which have been identified up to this time.

(The heretofore identified defendant's exhibits 2, 3, 4, 5 and 6 were thereupon received in evidence.)

Q. Doctor, will you explain what that chart shows, briefly, please?

A. This chart as shown is related to various allowable brackets, that is, one barrel each from twenty up to forty-eight barrels. First, in number of wells operated by the Humble Oil & Refining Company, and second the percentage of the total number of wells falling in that bracket which belonged to the Humble Oil & Refining Company.

Q. Now, Doctor, have you made any study of the field to show what the result would be if the allowable in the East Texas field were allocated to each lease in the field in the proportion of the acre-feet of net effective oil sand under the particular lease to the net effective oil sand in the whole field, as to whether each lease in the field would produce an amount of recoverable oil substantially equivalent to the recoverable oil originally in place between each lease?

A. I have.

[fol. 498] Q. If such a method of allocation was adopted, that is, on the basis of acre-feet underneath the lease as

compared with the acre-feet in the whole field, state whether or not each lease in the field would recover substantially the equivalent of the recoverable oil originally in place between such leases?

A. It would not.

Q. Just state why.

A. That would occur in any field, that is, that method of distribution would accomplish that result in any field only if all of the wells in the field produced for the same length of time and if the number of acre-feet of oil saturated sand underlying each lease depleted the same percentage as that underlying each other lease in the field. In the East Texas field since the water is encroaching from the west, in general the wells on the west will produce a much shorter time than those further east.

Q. All right. Then under the actual conditions in the East Texas field is it true or not that each lease will produce exactly as long as each other lease?

A. Definitely not.

Q. That is definitely not true?

A. Yes, sir.

Q. Is it true that in the East Texas field as it is produced that each lease will contain from one period to the next exactly the same percentage of the acre-feet of oil saturated sand in the field? Do I make myself clear?

A. I am not sure that I understood your question, Mr. Hart.

Q. I understood that you said that a proration on the basis of reserves would permit each lease to recover the equivalent of the recoverable oil originally in place if you [fol. 499] started out and prorated on that basis only if each lease would produce the same length of time and if you assumed that each lease would continue throughout the history of the field the same percentage of the recoverable oil or the same percentage of the acre-feet of sand?

A. That is correct.

Q. Is that second condition true as applied to the East Texas field? Will each lease always have exactly the same percentage of recoverable oil and the same percentage of acre-feet of sand?

A. It will not.

Q. Why is that? Explain that to the Court.

A. Because of the fact that the water drive is coming from the west and in general the wells of the tracts on the west will be depleted much more rapidly in the per cent of the oil contained under them than those further east. Now, wells further to the east now have substantially the same amount of oil underlying the leases that they originally had, whereas some leases to the west are practically if not entirely depleted.

Q. Dr. Patten, let me ask you this: If you go to calculating the number of acre-feet underneath any lease is there a certain percentage of error that might be expected in making such a calculation?

A. Yes, sir.

Q. Even using the most careful estimates you can use?

A. Yes, sir, there is always some error.

Q. Well, what would be the percentage of error that you might have?

A. I would hesitate to give you an exact figure on that.

Q. Well, if you assume a certain net effective sand are there certain variable factors that would enter into any cal- [fol. 500] culation of the amount of recoverable oil that would be underneath any tract, and what percentage of error or what chance of error would there be in making any such calculation of recoverable oil?

A. Assuming that you knew the number of acre-feet of oil saturated sand, the other factors which would be involved would include, of course, the porosity of the sand, the per cent of connate water and what may be called a recovery factor for that particular area in the field or that particular field.

Q. Well, assuming, say, net sand, how much might estimates vary, depending on different estimates as to those factors which go into a determination of the recoverable oil after you have once gotten net sand or made your best estimate you can of that?

A. Those all vary as much as other factors which I have mentioned. That is, as much as the porosity per cent will vary.

Q. How much does the per cent of porosity vary?

A. Where?

Q. Say throughout the East Texas field.

A. I couldn't give you definite values on that. I have seen the results of pore analyses taken from the East Texas

field which did show in some instances wide variations, on the order of say between nine and ten, and thirty-three per cent in certain instances.

Q. Well, what other variations do you have there, what other factors did you mention, and how much may they vary?

A. Per cent of connate water. I don't know to what extent you can say on the average it does vary throughout the field, although those pore analyses did show some variation in per cent of connate water.

[fol. 501] Q. Now, Doctor, in your opinion, could any formula be devised which would give to leases in the field the exact amount of recoverable oil which was originally in place underneath such leases or which is now in place underneath such leases?

A. No.

Q. Taking into consideration all the leases in the field?

A. Of course, it obviously couldn't be done exactly.

Q. How much off might you be on any formula that you know?

A. I don't know.

Q. Or is it possible to know how much you might be off?

A. You wouldn't know. You would never know how much off you were even after you had produced the field, that is, not definitely, and there is considerable doubt as to how much off you would be when you start because there are so many factors involved. Even assuming that you knew how much recoverable oil was originally in place under each tract, you would have the further difficulty of estimating how long each well will produce and how much oil is going to be produced from the field as a whole. Of course, if we knew how much was going to be produced from the field as a whole, what percentage would be produced—that is contained under each tract, I will say it that way—then it might be accomplished by allowing those wells farther east—farther to the west—to produce until they had produced all of their oil, and then take a row of wells next to them and produce them until they had produced all of their oil, and then take another row and then finally you would get across the field, and if you made a mistake you might have oil left over or somebody might not have it.

Q. I mean under any practical method of proration that would allow any leases to produce currently to some extent,

is there any method of proration that would let them re-
[fol. 502] cover the amount of oil originally in place or currently in place except the method you spoke of where you shut off the rest of the field?

A. It can't be done exactly.

Q. Doctor, have you studied the tabulation of densities which was prepared, I believe, by Mr. Moore for the Humble and which was introduced in evidence showing the number of wells on tracts drilled to certain densities?

A. Yes, I have looked at that tabulation.

Q. Do you have that tabulation or do you need to refer to it in testifying about it?

A. I don't have that with me, Mr. Hart.

Q. Is it here on the table?

A. Yes, sir.

Q. Would you get it?

A. Yes, sir.

Q. Doctor, is this tabulation that you have here based on the classification of the wells in the field according to certain densities? The one that was made, I believe, by Mr. Moore and introduced in evidence.

A. I believe that is correct.

Q. Now, Doctor, what does that show with reference to the percentage of wells in the East Texas field that are drilled on the very densely drilled tracts?

A. The tabulation shows that between—I believe it is shown here as between .1 and .4 acres per well, and there is 1.40 of the wells in the field, or a total of 360 wells. Between .5 and .99, or 2.03 per cent of the total number of wells or 523 wells. Between 1 and 1.9 is 5.19 per cent of the total. Between 2 and 2.9 there are 8.66 per cent of the wells.

Q. Now Doctor, if you take all of the wells in the field that are drilled on tracts that have been drilled to a greater
[fol. 503] density than one well to three acres, what per cent of the wells in the field are drilled to a greater density than that?

A. 17.28 per cent.

Q. What percentage of the wells in the field are drilled on tracts where the density is one well to three acres up to one well to 4.9 acres?

A. 28.45 per cent.

Q. And what is the next group there?

A. The next group is from 5 to 6.9, or 38.22 per cent.

Q. Then what percentage of the wells drilled on tracts where the density is one well to seven acres or a less density than that?

A. 16.05 per cent.

Q. Now, what per cent of the wells in the field are drilled on tracts where the density ranges from one well to three acres to one well to seven acres?

A. Almost exactly two-thirds of the field.

Q. What is the average density of drilling in the field, approximately?

A. It is approximately one well to five acres.

Q. Well, now, Doctor, considering the percentages there, I will ask you whether or not the allowance by the Commission of a twenty barrel base or minimum allowable has any substantial effect on the allowable which is assigned to the wells on tracts which are less densely drilled?

A. Of course, it has some effect on those allowables, the wells that are less densely drilled. However, the giving of an allowable of twenty barrels to wells on very small tracts does not have any great effect on the allowables for the other wells because there are so few of those wells, comparatively speaking, on very small tracts.

Q. I believe the testimony shows in this case that the [fol. 504] Humble has drilled to a density of about one well to 5.7, or eight-tenths of an acre. Now, or course, examples could be found in the field where Humble leases are drilled to a much greater density than that, could they not?

A. Yes, there are some of them.

Q. And leases of other operators that are drilled say one well to eight or nine acres?

A. Yes.

Q. In cases where you would find that you would find the same discrepancies between what the Humble and other operators are getting as has been shown by the specific examples shown by the plaintiffs, isn't that true?

A. I don't recall any example.

Q. They showed examples where that was true?

A. Yes, sir.

Q. That same proposition works against the Humble just like it works in favor of everybody else, doesn't it?

A. I imagine it would, although I haven't investigated that particular thing.

Q. Now, Doctor, under a method of allocation which would be based on the acre-feet of sand under a lease as compared with the acre-feet of sand under the field as a whole, what would be the result of the application of a formula like that as to the percentage of the recoverable oil that would be recovered by wells on the west side of the field?

A. They would get considerably less oil, they would recover considerably less oil than they originally had under those tracts.

Q. Well, now, what effect does the allowance of a twenty barrel base or minimum allowable by the Railroad Commission have toward correcting any inequity that might be done to the west side by reason of the time element and [fol. 505] the fact those leases would go out sooner than those lease- to the east of them?

A. I assume what you mean by inequity is if an operator does not recover the amount of oil equivalent to that which originally he had under his tract, is that correct, Mr. Hart?

Q. Yes, sir, that is what I meant to say.

A. In order for wells on the west side, the extreme west side of the field, to recover an amount of oil substantially equivalent to that which they originally had underlying their leases, it is necessary that they produce at rates substantially greater than is in proportion to the amount of oil originally under the tract as compared with those to the east, and the giving of a twenty barrel minimum to such wells will in part at least counteract the shorter producing life of those wells.

Q. Now, what about the operation of the marginal or minimum allowable given—I don't mean the marginal, but the base, or minimum allowable, to these wells on the east side. Is there any factor to be considered in there with reference to those wells on the east side?

A. I don't know that I quite understand the meaning of your question.

Q. Well, you spoke of bottom hole pressure, as—and the formation of a gas cap in a certain portion of the field on the south side, and due to physical facts, is there anything with reference to the possible productive life of the leases on the east side, and the necessity that they might have 20 barrel minimum or base allowable at this time?

A. Well, if the bottom-hole pressure in the field does de- [fol. 506] crease substantially, to such an extent that a

substantial quantity of gas comes out of solution in the reservoir, I believe from our experience in other fields that a gas cap will form along the east edge of the field. The effect of that gas cap, of course, would be to push some of the oil slightly down structure.

Q. Well, what would the result of that be as to the productive life of the leases on the east side of the field?

A. It would decrease the productive life of the leases on the extreme east side of the field, if the probable pressure did decline sufficiently that the gas cap was formed.

Q. Do you recall that a certain questionnaire was sent out to the Humble Oil & Refining Company with reference to its leases back in August of last year?

A. Yes, sir, that is correct.

Q. Did that questionnaire show certain leases of the Humble Oil & Refining Company under which the Humble stated that they had the same number of acre-feet of sand as originally, and other leases where they claimed to have a depletion in acre-feet of sand under their leases?

A. Yes, sir, in their answer to the questionnaire, they did give, as I recall, the original number of acre-feet of saturated sand under the lease, and at present.

Q. Do you have a map here which was prepared by the Commission showing the leases of the Humble, which according to the information given in reply to your questionnaire, shows the leases under which no depletion had taken place, and the leases under which they claimed to have some depletion in acre-feet, up to the present time?

A. Yes, sir, that is correct.

Q. That is the map which has been put up on the board there, showing the leases in light green, and in dark green. [fol. 507] A. That is correct.

Q. We want to offer that. That will be defendants' Exhibit No. 7.

(Thereupon said map was admitted in evidence as Defendants' Exhibit No. 7.)

Q. Doctor, would you explain what map shows, please, sir.

A. I believe, Mr. Hart, you have pretty well explained it already.

Judge Allred: We don't know what the dark green stands for and what the light green stands for.

A. The dark green shows those leases which in reply to the questionnaire the Humble Oil & Refining Co. stated that they had the same number of acre-feet of oil saturated sand under those acres at the present time that they had originally. The light green are the leases where there was less oil saturated sand underlying the leases than there was originally.

Judge Sibley: Due to the invasion of water?

A. Yes, sir.

Judge Allred: Have you figured out the percentage on that, Doctor?

A. I don't have that figure, as to what the acreage is, at this time. I can supply it to you, though.

By Mr. Hart:

Q. Now, Doctor, do you have a tabulation which was made by you, or under your direction of the—showing the Humble leases in the East Texas Field, showing their acreage and the potentials of the wells on each lease, and the allowable for each lease; do you have that tabulation?

A. Yes, I have such a tabulation made.

Q. Do you have it here where it can be introduced?

A. Yes, I believe I do. I don't have it with me here.

Q. I wonder, if the Court please, if we could have a few [fol. 508] minutes, so that we could get these different tabulations together?

Judge Sibley: All right, sir, we will stop five or ten minutes.

(Thereupon Court was recessed at 3:30 P. M. until 3:40 P. M., at which time the following proceedings were had:

By Mr. Hart:

Q. Dr. Patten, I believe I had just asked you whether or not the computation had been made by you showing the leases of the Humble Oil & Refining Co. in the East Texas Field, the number of acres in each of those leases, the total allowables for the wells on those leases. Have you made up a tabulation of that kind?

A. A tabulation of that kind was made under my direction.

Q. All right, sir. Now, I will ask you to hand that to the Reporter so that it can be marked as an Exhibit, please, sir.

(Thereupon said instrument was marked as Defendants' Exhibit No. 8.)

Q. Doctor, I won't ask you to go into every lease on that, but does that show at the end of the tabulation the total number of acres in the Humble leases in the East Texas Field?

A. Yes, sir, it does.

Q. What is that acreage, according to your tabulation?

A. It shows a total on the Humble leases of 14,578.72 acres.

Q. And what does it show there also there beneath that, the total acreage in the East Texas Field?

A. This tabulation shows 132,011.83.

Q. What percentage of the total acreage in the field is comprised in the Humble Oil & Refining Company's leases?

A. 11.04%.

[fol. 509] Q. What is the total of the potentials on the wells in the leases of the Humble Oil & Refining Co. in the East Texas Field?

A. The total potential of the wells of the Humble Oil & Refining Company leases is 1,841,224.

Q. What is the total of the potentials of all of the wells in the East Texas Field?

A. 15,794,503.

Q. What percentage of the total potential of all of the wells in the field is represented by the total potential of all of the wells on the Humble Oil & Refining Company leases?

A. 11.66.

Q. According to that tabulation, what is the total daily allowable for all of the wells on all of the leases of the Humble Oil & Refining Co. in the East Texas Field?

A. 76,593.71 barrels.

Q. And what is the total allowable, daily allowable for all of the wells in the East Texas Field?

A. 690,109.36 barrels.

Q. If the field were prorated exclusively on an acreage basis without any minimum or base allowable would or not the Humble be getting more or less than they are getting under the present formula?

A. They would, according to that tabulation get slightly more—I beg your pardon—slightly less.

Q. That is even if there were no base or minimum allowable whatever?

A. That is correct.

Q. If it were a straight potential order, that is, if you would eliminate a marginal or minimum allowable at all, and prorate it just purely on the potentials of the wells, would or not the Humble Oil & Refining Company be getting [fol. 510] substantially the same daily allowable that they are now getting under the present proration formula?

A. They would get slightly more under those conditions than they are getting now, a difference of .56 of a per cent.

Q. We offer in evidence that tabulation, if the Court please.

(Thereupon said tabulation was admitted in evidence as Defendants' Exhibit No. 8.)

Judge Sibley: Dr. Patten, this first column is surface acres, and not acre-feet?

A. That is correct.

Q. Doctor, there has been some evidence here about wells producing salt water. Have you made up a tabulation of the wells producing salt water in the East Texas Field, grouped according to the percentage of salt water produced and showing the number of wells in each one of those groups, and the total number of wells producing salt water in the East Texas Field?

A. Yes, sir, such a tabulation has been made under my direction.

Q. I will ask that the tabulation be marked as Defendants' Exhibit No. 9.

(Thereupon said tabulation was marked Defendants' Exhibit No. 9.)

Q. Doctor, I don't care for you to go through all of those percentages. I will just ask you this. What is the total number of wells in the East Texas Field at the present time producing salt water?

A. In accordance with this report, which was as of November, 1939, there were 4,422 wells.

Q. Where are those wells located, Dr. Patten?

A. In general, they are on the western edge of the field.

Q. What could you say about the producing life of those wells as compared with other wells in other portions of the field?

[fol. 511] A. They can be expected to produce a much shorter time than the average well in the field.

Q. We offer that tabulation in evidence, and we also wish to offer in evidence the tabulation which Dr. Patten has already testified about showing the percentage of the wells falling in the various density classifications. I think the Reporter has a copy of it.

(Thereupon said tabulation just testified to by the witness was admitted in evidence as Defendants' Exhibit No. 9, and said tabulation last referred to above was admitted in evidence as Defendants' Exhibit No. 10.)

Q. Doctor, do you know anything about how many wells have been abandoned on the western side of the field?

A. I don't have the exact figure, but as I recall, something in the neighborhood of two or three hundred wells, possibly a little more than that.

Q. A well that is pumping 95% salt water now, how long is it liable to run, according to past experience?

A. I couldn't answer that question very definitely. They don't ordinarily produce a very long period of time after they are making 95% water, and particularly when—since the allowables are reduced to what they are at the present time, which amounts to 11.7 barrels, they don't produce very long.

Judge Sibley: Would it be years or months?

A. Well, it would be a matter of a number of months.

Judge Sibley: I want to ask one other question just for my information; not that it has got anything to do with the case much. When you return this salt water to the sands, will the weight of the column carry it down, or will you have to force it down?

[fol. 512] A. The weight of the column carries it down, for this reason. The normal pressure in the East—I will say the East Texas Field originally, was normal, and originally the pressure was 1,625 pounds. The pressure on the west side, where water is being returned, is usually about 1,150 pounds per square inch, so there is 500 pounds per square inch differential.

Judge Sibley: You only return it, I suppose, after the well is already drowned out?

A. We grant permits to people only after a hearing on each individual well, and we do require that casing or liner be set so that the water is returned below a shale break, so that by the time the water does strike the oil-gas contact it will have to move several thousand feet from the well.

Judge Sibley: That is all.

Judge McMillan: Talking about wells producing 95% water, isn't it wasteful production, taking all of that water out of the reserve, reservoir, to produce that little oil?

A. From the standpoint of maintenance of bottom hole pressure, it is.

Judge McMillan: Those wells that are producing so much water are not being really produced, are they?

A. It is difficult to answer that question definitely, because there are two factors that somewhat counteract it. The production of that much water does have an appreciable effect on the bottom hole pressure. On the other hand, there are local traps in the field, and when wells are abandoned, some of that oil in some instances certainly will be trapped and not recovered by other wells, and in other instances, it will be recovered by other wells, in substantial proportion of it.

[fol. 513] By Mr. Hart:

Q. Doctor, if a man has a well like that, and he isn't allowed to produce it, he just won't get the oil?

A. He just doesn't get the oil. Somebody else gets it.

Q. If anybody gets it at all, it will be somebody else?

A. Yes, sir.

Q. You spoke of shale breaks in reply to a question by Judge Sibley about just—when you re-inject the water, making them put it down below a shale break, if the water comes in contact with the oil, it will have to do it some thousand feet distant. Are the shale breaks of some distance in the field, or are they just of local character?

A. From the information I have been able to obtain, some of those shale breaks do extend over a considerable distance. Others are small lineal shale breaks.

Q. I believe that is all.

Cross-examination.

Questions by Mr. Moody:

Q. Dr. Patten, this system of allowing 690,000 barrels to the field per day, and allowing the field to produce four days a week, is that 690,000 barrels of oil, or 690,000 barrels of fluid?

A. That is oil.

Q. Do you know approximately how many barrels of fluid are produced in the field in a day to obtain 690,000 barrels of oil?

A. The last report which we have on that shows as of November 29th, showed 200,000, approximately 200,000 barrels of water being produced per day from the field. That is, per producing day.

Q. Then, that would mean that in your production, in the production of that field, the days that the field produces, it is actually producing, then, about somewhere in the neigh-
[fol. 514] borhood of 890 to 900,000 barrels of fluid?

A. No, that isn't true, Mr. Moody, for this reason, that all of these wells, or practically all of them which produce any appreciable amount of water, have received permission to produce that oil over the 30 or 31 days of the month, and reduce the rate of production, so that it won't exceed the allowable for the month, and so that means the oil which they produce and the water which they produce is actually produced continuously over the month, or practically so.

Q. If you spread out the 690,000 barrels of oil per day for four days in the week, that is the number of days they are allowed to produce in the week at the present time, is it not?

A. Yes, approximately.

Q. If you spread that out to the basis of seven days, and multiply the 690 by four and divide by seven, it means you average about 400,000 barrels of oil a day, doesn't it?

A. Yes, sir.

Q. Then, if—of course, these wells that produce quantities of water and some oil, they are producing seven days a week, then, and when you say you get about 200 barrels of—200,000 barrels of water a day, you mean by that, do you not, that you get that 200,000 barrels of water per day for seven days a week?

A. No. Perhaps I didn't make myself clear on that. That 200,000 barrels was calculated on the basis of allowable on producing days.

Q. I see.

A. I might explain the type of questionnaire we send out, and how the figure is arrived at. We ask the operator what percentage of water his well is producing, and how many [fol. 515] barrels it is producing, and that number of barrels is always calculated on the basis of the allowable. That is, if a well has an allowable, say, on the schedule, of 20 barrels, and it is producing 50 per cent water, then we estimate that on a producing day, per producing day, he would be producing 20 barrels of oil. Actually, he may produce the well continuously at the rate of 11.7 barrels of oil per day, and 11.7 barrels of water per day.

Q. Dr. Patten, give me that figure, if you can, please, sir, based on a four-day week, producing the field, which would mean to bring the water production back to the four-day period, or put it on a weekly basis. Can you tell me about how many barrels of fluid are taken out of the reservoir daily on a four-day week basis, or state it the other way, daily on a seven-day a week basis?

A. I see what you are getting at.

Q. That is what I am driving at, yes, sir.

A. On a seven day basis, it would amount to—that is, in barrels measured at the surface, a total of about 530,000 barrels per day. I believe that is an answer to your question.

Q. About 530,000 barrels per day?

A. Yes, sir.

Q. That includes the water and the oil?

A. Yes. Now, of course, we should, in order to get the equivalent of the water in terms of oil, we should take into consideration the fact that the oil shrinks in its volume when it comes to the surface; whereas, the water doesn't. One barrel of oil in the ground amounts to approximately eight-tenths of a barrel of oil at the surface, so that would make the figure, converted to the surface, 200,000 barrels of water would amount to 160,000 barrels of oil, as the equivalent to that.

[fol. 516] Q. You are now calculating the water in terms of barrels of oil at the surface?

A. Yes, sir.

Q. But that comes out down in the ground, that water does; it occupies just a little less space, the water does, in the ground, than it does at the surface?

A. Yes, the water remains substantially constant, but the oil shrinks at the surface.

Q. Yes, when the gas passes out of it?

A. Yes, sir.

Q. So, that will be about 530,000 barrels per day for seven days a week that the field produces?

A. Yes, it would be in that order, although we should make the correction I mentioned.

Q. Your chart you had a few minutes ago that showed the shrinkage or decline in bottom hole pressure as oil and water are produced, I believe that was your Exhibit 2, is my recollection of it. It isn't up there now, but you recall the one I refer to?

A. Yes, sir.

Q. That was based, was it not, those figures you had there of 380,000, for example, oil and water, that was based not on just the oil after you have taken away the water that is produced, but that is oil and water together, the 380,000?

A. No, I will have to ask you—I will have to get the chart. (Thereupon, said chart was opened.)

Q. Now, then, not the curve that has the 2,660,000 marked opposite it, but the curve that has 432,000 barrels daily averaged with water, you show that the bottom hole pressure will get to the—below the point of saturation, I think you call it, where the gas passes out of the oil, about the middle of [fol. 517] 1943?

A. Yes, sir.

Q. Now, as a matter of fact, the field is now being produced, is it not, at approximately a hundred thousand barrels of oil and water, on an average, above that 432? You said about 530,000 is being produced now.

A. I had better explain the chart again, Mr. Moody.

Q. All right.

A. The curve which you mentioned there is our estimate of the relationship between the pressure and time, as oil is produced from the field at a rate of 432,000 barrels per day, together with what we estimate to be the amount of water that would be produced along with it.

Q. I see. When you say 432,000 barrels daily, average, with water, you have taken the water out, and you are talking about 432,000 barrels of net oil?

A. Yes, 432,000 barrels of oil, and it may produce 100,000 or two or three of four hundred thousand barrels of water in addition to that. The upper curve there is our estimate of how the bottom hole pressure would vary if no water were produced after November, 1939.

Q. If you didn't produce any water at all and produced 432,000 barrels of oil daily, why, the top line would mark the decline in the bottom hole pressure?

A. That is correct.

Q. This middle line, the heavy one, you have got 380,000 barrels daily average with water?

A. Yes, sir.

Q. Does that mean 380,000 barrels of oil and no water included in it, or has the water been taken out of the 380,000 barrels?

A. That is 380,000 barrels of oil.

Q. Without regard to how much water——

[fol. 518] A. And to that will be added—to that 380,000 barrels will be added the volume of water which will be produced, or which we estimated would be produced if that trend was followed.

Q. Let's talk just for a second about the 432,000 barrel curve and the 380,000 barrel curve. How much water was figured as the amount of water produced in calculating that curve?

A. That water varied. I don't have the figures on the amount of water production. I do recall that it checked pretty closely up to the present time with what our reports have shown the water production to be, slightly greater than what we have shown the water production to be, and in 1943 and 1944, as I recall, the water production was up—as estimated on that exhibit, up around seven or eight hundred thousand barrels a day.

Q. That is all, as far as I am concerned.

Judge Sibley: Does that mean that if the lucky leases to the east were to buy the drowned out wells to the west, or hire the fellow to put their water back down, they could hold the water back down.

A. Yes, if all of the salt water produced were returned to the reservoir, the bottom hole pressure would follow that upper line. I might say, we are much more certain of the upper line than we are of the others, because we have the

oil being produced, and we have a definite figure there, but the other curves are estimated.

Mr. Moody: I want to ask a few more questions.

Q. That chart proves, does it not, that the production of this water at the present rate is leading to the dissipation of the reservoir pressure or bottom hole pressure?

A. Yes, it is having a very definite effect upon the declining bottom hole pressure.

[fol. 519] Q. And at the present time there is a very small per cent of the water that is being produced put back into the sand; isn't that right?

A. Yes, sir, I would estimate at the present time there is on the order of about 20,000 barrels per day. Within the past four or five months, there have been, I would say, three-fourths of the permits for water injection wells, have been granted; particularly has that been true since the suit was filed by the Attorney General's Department to prevent the polluting of the Sabine River. We have had a number of applications since that time. It seems to have supplied a very great incentive to do that.

Q. Practically all of that water comes from wells along the west side of the field, does it not?

A. Yes, they are in general along the west side. They are in the western area.

Q. And the part of the field from which that water is being produced, and this reservoir pressure expended would cover considerably less than 10 per cent of the entire area of the field, would it not?

A. I couldn't make an estimate of the acreage. That is because there are some wells making water which are a considerable distance in the field. I have an idea your 10 per cent is somewhat near right.

Q. Those wells making water in the interior of the field are in densely drilled areas ans where there has been a greater taking of oil in proportion than there has generally over the field?

A. I haven't made a detailed investigation of that. I do know that in one or two of those areas that appears to be true, but I think there are wells on sparsely drilled tracts in the field where they are making water.

[fol. 520] Q. That would be a well where they had drilled too deeply into the sand, wouldn't it?

A. That would be one cause of it.

Q. Yes, sir. Here is the map I had in mind. It is the Humble's Exhibit No. 5, I believe. The green area there, I understand, on the western edge of the field, is the area that is—that the water is now under?

A. Yes, sir.

Q. Of course, not all of the wells that are within the green area are producing water at this time; isn't that true?

A. I don't know; I didn't prepare the map.

Q. Do you know where the wells are that are producing the water?

A. I know in general where they are. It looks like—I will say it looks as though it might be substantially correct.

Q. You know, do you not, that in places—now, then, in the places where they are producing water, that are far into the field, in most instances, isn't it true that those are wells that have been densely—where the area has been densely drilled, where there has been a large production of oil, or else instances in which in completing the well, the well was completed too near to the water-oil contact plane?

A. I might add another point. There are also wells where for some reason or other the water has backed up to wells in an area which are not necessarily drilled. Governor Moody, I haven't investigated that matter sufficient- intensely to give you an authoritative answer on it.

Q. All right. I will skip to something else. Dr. Patten, in fixing the field allowable for the East Texas oil field, the market demands, or the demands of the market for oil from that field are taken into consideration, are they not, in fix-
[fol. 521] ing the field allowable?

A. Yes, sir, that is one factor that is taken into consideration.

Q. The Railroad Commission monthly holds a hearing called a state-wide hearing, does it not?

A. That is correct.

Q. And they have some estimate as to the market demand from the East Texas field for oil?

A. That is correct.

Q. And the field allowable is usually a little bit below, or maybe a little above, but right in the close neighborhood of the estimated market demand; isn't that right?

A. Do you mean—referring to that estimated market demand what the nominations are from the field?

Q. I refer to what the Commission determines to be the present market demand for the field.

A. Yes, sir, I would say it is somewhere in that neighborhood.

Q. Maybe some few thousand barrels below or above for that month?

A. Yes, sir.

Q. Now, then, that is a factor, of course, that enters into the fixing of that daily field allowable by the Commission; they consider that?

A. Of course, Governor Moody, I don't fix the allowable for the state. What you are saying is substantially true.

Q. Now, then, in 1935—1938, and for the early part of 1939, and up until the opinion was handed down in the first Rowan & Nichols case, the field allowable was fixed at 522,000 barrels, about, was it not?

A. That was on producing days.

Q. Yes, sir; and it was allowed to produce five days a week; isn't that correct?

A. It varied during that period. I think most of the time [fol. 522] it was five days. Some part of that time it was six days. I don't recall what the exact number was any particular month.

Q. And on that basis, the field produced about—on an average, figuring it on a seven-day week basis, instead of five or six-day week basis, the field produced about 380,000 barrels daily, did it not?

A. Over what period of time?

Q. When it had a field allowable of 522,000 barrels for producing days, that calculated out about 380 or 400,000 barrels per day, figured over a week of seven days?

A. Yes, sir, it was about that, yes, sir.

Q. Now, then, in order to give every well in the field under that plan of proration 20 barrels of oil—those that would make it—and then adding to it, which is up to the biggest well, I believe you said produced about 26 barrels—between 25 and 26—in order to give each well 20 barrels a day you had to hold that thing down to five or six days a week, didn't you?

A. Well, say that again.

Q. Well, in order to make production fit market demand, you could not give every well in the field 20 barrels a day plus the seven to ten barrels that was divided out on the

potential factor of 2.32 per cent of the hourly potential,—you could not do that seven days a week and stay within the market demand?

A. If the market demand at that time was 380,000.

Q. Well, can you state to the Court why some weeks you were allowed to produce 522,000 barrels for five days a week, and for other weeks for six days a week 522,000; but never were you allowed to produce seven days a week at 522,000, unless it was to try to fit this thing into the ques-
[fol. 523] tion of market demand.

A. Of course, at that time I had very little to do with fixing the allowables in East Texas; but it is my recollection that two factors were considered. One was the pressure history, and it had been established that at high rates of flow bottom hole pressure would decline, and at lower rates of flow it would stay at a higher point; and I think that was one of the factors considered by the Commission in addition to the market demand.

Q. Now, if there was a market demand per week for 522,000 times five,—that would be about 2,160 thousand barrels of oil. Now, you could not let the field produce that clear through ratable seven days a week and at the same time give every well in the field 20 barrels a day, could you?

A. The market demand was how much?

Q. If there was a market demand for five times 522,000 barrels.

A. Per week?

Q. Yes; market demand per week. You could not produce that quantity of oil over the seven day period, allowing wells to produce the same amount each day for seven days and apply a formula which you then had, which in practical effect was 20 barrels plus 2.32 per cent of the hourly potential of each well?

A. Certainly not. That is just a matter of arithmetic.

Q. At 20 barrels per well you would have over 500,000 barrels of oil, and you had to stop them three days a week to hit that market demand?

A. Yes, sir; it would have to be done that way.

Q. The same way I think is true about this order, isn't it?
[fol. 524] A. What is true?

Judge Allred: Is anybody attacking this order on the ground that the Commission took market demand into consideration?

Mr. Moody: I am just about to show that they can't allow them 20 barrels per day and stay within their market demand and that the 20 barrels a day proposition is a matter of making the amount that will be produced fit the market demand rather than one of accomplishing a fair and ratable distribution among the operators in the field of the allowable oil.

Mr. Hart: Governor Moody stated our position is that considering the shut down days and the amount it has been reduced by those days, that that figure of 11.7 barrels is the reasonable minimum below which the Commission cannot safely reduce those wells without causing premature abandonment, waste, and confiscation. With regard to the marginal wells, the Commission contends that the Legislature has not delegated them the power to control the production of marginal wells. We object to this line of questioning on the grounds that there has been no attack on the statute, which permits the Railroad Commission to consider market demand in determining how much oil should be produced in the State or in any field.

Judge Sibley: There is some constitutional question about that, isn't there?

Mr. Hart: Statute has been upheld by the Courts of Texas as being constitutional, and they have the right to consider market demand on the ground that if they exceed the market demand that the oil will be on the surface and there will be underground waste; and it has also been sustained in the Champion case on the same basis. I don't [fol. 525] think there is any question about their right to consider it.

Judge Sibley: I really wanted to know what underlays this 20 barrels per well structure. I wanted to know what the idea is about it; but I did not feel at liberty to ask this gentleman. You say it is not 20 barrels practically because of the shutdown, but only 11.7 barrels.

Mr. Hart: Yes, sir. We wish to further object on the ground that this witness is not a member of the Commission and cannot testify about what the reasons of the Commission may have been. The order speaks for itself.

Judge Sibley: I will sustain the objection to my own question.

Mr. Hart: I further object on the ground that the reasons or motives of the Commission are immaterial. That the

only question is how the order actually operates and if the order can be reasonably sustained on the ground of prevention of physical waste, and I don't think there is any question about that. I don't think anybody has been attacking this top allowable on the ground that it is too low. The only attack on it is that it might be too much. We believe the order can be sustained on the ground that it prevents physical waste. Whatever the reasons the Commission might have had are immaterial, and certainly this witness can't testify about them.

Mr. Moody: My view about that is this,—I don't know that this witness is in a position to state what was said between members of the Commission at the time they agreed on this thing, and if he were, I don't think I would care to ask him.

Judge Sibley: He said he was not in charge at this [fol. 526] time.

Mr. Moody: But I think this witness may give testimony from which the Court can draw its conclusions about the proposition of this 20 barrels, as well as the effect of the 20 barrels. I may have misunderstood Mr. Hart's pleading, but as I understand his answer in this case it was to the effect that the 20 barrels per day—it is true he does average that 20 barrels out here over a seven day period and I believe gets it down to 11.7 barrels; that that was necessary to prevent confiscation of property and prevent abandonment of wells and prevent the loss of oil ultimately recoverable. If it may please the Court, to my mind under the evidence it is a fiction to say that this is 11.7 barrels per day. Now, is this 20 barrels necessary to give equality between operators in the field, to allow the operators an opportunity to produce their fair share of oil? I think that it has been shown here that when you consider the oil that these operators have in place under their leases, the average of the field, as a matter of production, is about 1300 barrels per 100 acre-feet of sand. Still many are producing many times that amount, and others less than that; and I think the direct testimony of Dr. Patten will show that this business of producing 690,000 barrels a day four days in the week, instead of producing 400,000 barrels is for the purpose of giving to every well on these little tracts, regardless of their size, whether they are on one tenth of an acre, or on ten acres, a flat 20 barrels a day and keeping them in

the oil business without regard to how that may affect other operators in the field.

[fol. 527] Judge Sibley: What question is it you want to ask him?

Q. I have asked you about the 522,000 barrels. Now, I want to ask you, so far as this 690,000 barrels is concerned, if it is not necessary in order to make their formula work that has been written on that blackboard of a complicated fraction plus 20 barrels—that in order to make it work, isn't it necessary to hold this 690,000 barrels down to four days a week, and if you don't do it then their order can not be made to apply to the East Texas Field as they now enforce it and stay within the market demand?

A. Will you state that again, Governor Moody.

Q. Dr. Patten, with respect to the 690,000 barrels allowable, now enforced by the Commission and allowed under the present order, and allowed for four days each week in the field, is it necessary to hold the field to the 690,000 barrels for just four days a week, and close it in the other three days, in order to make the 20 barrels minimum operate and keep the deal within the market demand? In other words, if the market demand for the week is four times 690,000 barrels, and dividing it out over the seven days, and then applying the 20 barrel minimum, won't the minimum itself take up all the market demand?

A. Governor Moody, you are not going to produce but four times 690,000 barrels a week during the week. It is obvious that you could not produce but four days a week.

Q. That is to say, if you produce the 690,000 barrels for four days a week, you produce 690,000 times four?

A. Yes.

Q. If you averaged that out on a seven days a week you have about 400,000 barrels a day?

[fol. 528] A. That is correct.

Q. And if you tried to apply your formula, which is this fraction plus 20 barrels, the 20 barrels take up all the daily allowable?

A. Yes; you would have reduced that 20 barrels to 11.7 barrels to each property the same amount.

Q. You can't give them 20 barrels and produce on a seven day week basis, can you?

A. No; in order to have the same distribution you have now you would have to reduce the minimum allowable to

11.7. Of course, it is true they would get the same amount of oil.

Q. They would get the same amount of oil if you put it at 11.7, and then apply your factor to the difference. If to the remaining oil you apply your factor would each well get the same amount of oil?

A. If the minimum is 11.7 and wells are allowed to produce seven days a week, and the total allowable is set at 400,000, the distribution as between operators would be the same.

Q. Applying your factor to the remainder?

A. That is true.

Q. Now, Dr. Patten, you testified, as I understood you, that the field can not be prorated, in your opinion, so as to allow operators to produce exactly in that proportion that their respective reserves in their several leases has to the total reserves in the field?

A. If you know what the acre-feet of sand is under each lease, you could assign allowables to each well in that proportion.

Q. I was referring to an answer that you gave Mr. Hart. I understood you that it could not be done exactly?

[fol. 529] A. I said you could with giving each operator ultimately an amount of oil equivalent to what he had originally in place. He could not even within 15 or 20 per cent approach that, I believe.

Q. For practical business purposes it is possible, is it not, to estimate the quantity of recoverable oil in place under leases?

A. Such estimates are made.

Q. And it is upon those estimates that properties are sold and money is loaned on property?

A. Yes. Of course, those estimates may vary on the same property by as much as 50 per cent from one time to another.

Q. But in the oil business those estimates are made and people deal on the basis of them, and they are accepted in the oil industry as forming the basis of business transactions in leasing and loaning money, etc.?

A. That is one of the factors which is considered in buying a lease.

Q. In this very formula that is used, you undertook to approximate the quantity of oil under the leases, did you not—the recoverable oil?

A. A thick of the oil saturated sand under each lease, yes, sir; we tried to do that.

Q. Insofar as you attempt to apply toe formula—I am talking about that formula of acreage times sand thickness and times other things—insofar as you tried to apply that formula you are endeavoring there, are you not, to fix the production from wells on a basis of reserves under the lease?

A. No; that portion of the formula does not do that,—the portion of the formula which has been referred to as the proratable portion of the oil. If all of the oil was [fol. 530] distributed under that formula, the wells in the center of the field would get allowables which would be quite appreciably higher than the ratios of their reserves to the reserves of the field. Under that portion of that formula the wells in the center of the field would be favored over what they would have if they were in proportion to their reserves.

Q. Let me ask you this question,—you take the sand thickness times the acreage—the average acreage for wells on the lease—times bottom hole pressure times potential, over the sum total of all of those factors for every well in the field, and then multiply that fraction into your 176,000, do you not?

A. Yes, sir.

Q. Now, then, isn't that factor or that fraction rather, I will say, that you take, isn't that an attemt to relate the sand thickness and the bottom hole pressure and the potential of one tract of land, let us say, of one acre with one well on it to those factors for the entire field?

A. Yes; it is a relationship between the two. The only point I want to make is this: That in those sections of the field where the sand thickness is greatest, and in general the potential is considerably higher. For example, on the Rowan & Nichols tract, where the sand thickness, I believe, has been testified is about 93 feet, which is somewhat higher than the average for the field, the average potential of those wells is 965 barrels per hour; whereas the average for the field is 605; and so, as far as that portion of the formula is concerned, those wells located as the Rowan & Nichols are, get a larger portion of the allowable than they would get if this were purely on a per acreage basis of sand.

[fol. 531] Q. I understand, but now here,—acre-feet of sand has nothing to do with the amount of recoverable oil under a tract of land?

A. Yes; it does.

Q. The potential of wells has something to do with the amount of recoverable oil under a tract of land, does it not?

A. I would like to have you define what you mean at this time when you say the amount of recoverable oil under a tract.

Q. I will change the question. The potential of a well has something to do with the capacity of a well to produce oil from the sand that it is drilled into?

A. Yes; it has something to do with the rate at which it will produce it.

Q. Now, the bottom hole pressure under a tract, or the bottom hole pressure of a well, has something to do with the ability of that well to produce oil?

A. Yes; it is necessary for there to be sufficient bottom hole pressure in the reservoir to move the oil.

Q. The fraction that you use of acre-feet of sand times potential times bottom hole pressure as the numerator, and the sum total of those factors as applied to all wells in the field as the denominator, multiplied by 176,000 barrels of proratable oil is an attempt, is it not, to distribute that 176,000 barrels of oil on the basis of the comparative reserves of leases and the capacities of their respective wells to produce oil? Can you answer that question?

A. I cannot answer that "Yes" or "No".

Q. You can't answer it either "Yes" or 'No"?

A. I can answer it "Yes" to this extent,—that it does approach that, but in addition to that, those factors have this effect,—that they give a larger portion of the allowable [fol. 532] to those in the center of the field than they would obtain on the basis of recoverable oil in place, and as between the east and west side they give a little more to the wells on the west than they would to wells of similar sand thickness and acreage on the east.

Q. I think you misunderstood me, Dr. Patten. I am not trying to commit you that it works out in an inequality in the distribution of the 176,000 barrels or that it does not; nor am I trying to commit you to the proposition that that is a good or bad way to do it. What I am getting at is this,—if that particular factor does not attempt to distribute among wells in the field 176,000 barrels in the proportion

that the respective wells and their reserves and their capacities to produce bear to those characteristics of the other wells in the field.

A. It does eventually what you say with a modification of that, which I stated.

Q. You add to that the minimum of 20 barrels allowable, do you not?

A. That is correct.

Q. And that is without regard to the capacity of the wells to produce or the reserves on the tract from which the wells are drilled?

A. That is correct.

Q. So then you are basing this daily allowable of 690,000 barrels about one fourth on factors that look to the reserves of leases and the capacity of wells to produce, one as compared with the other, and three fourths on a flat per well basis without any regard to the area that the well drains, the size of the tract it is drilled on or the capacity of that well to produce oil or the reserves of oil under it; that is [fol. 533] correct, isn't it?

A. You stated a number of things there.

Q. The result of it is this, isn't it, Dr. Patten,—that to the extent of one fourth of the field allowable you attempt to distribute that among wells in proportion to their respective reserves and abilities to produce oil, and the other three fourths of the daily field allowable is distributed among wells without any regard whatever to the reserves under the wells or their capacities to produce oil?

A. What you said is essentially true, Governor Moody, that one fourth of it is distributed on the basis of this produce of acreage times pressure times sand thickness times potential times bottom hole pressure, and about three fourths on a per well basis; but I do want to point out this: That this portion which has been called the proratable portion, or the proratable portion of the formula does not directly relate the number of acre-feet of sand of one lease to another. It is modified by these other factors.

Q. Dr. Patten, you said that you thought the production of this quantity of water on the west side leads to some waste. Over on the east side, where this pressure is getting down to the critical point over some of these wells, don't you think that the allowable that those wells are receiving over there is so great that it will reduce the pressures over there? I mean the reservoir pressure to

below the critical point where the gas comes out of solution in the oil and leads to waste of oil.

A. I said this,—if those wells over there don't produce and are abandoned, that very appreciable quantities of oil will not be produced from the field if those wells on the east side are abandoned.

[fol. 534] Q. I might be inclined to agree with you on that, but that is not the question I asked you. I asked you whether or not the allowable for these east side wells was not so high that it would likely tend to waste in causing the production to be so high that the gas would pass out of the oil?

A. I don't believe so. Our bottom hole pressure chart will show that, except for this area of low permeability in the southeast corner of the field, that the pressure gradients are essentially constant across the field. The proposition, which you are implying at least, is that wells on the east side and west side should be closed in and the wells in the center should be producing.

Q. No; I am not even suggesting that. I did not mean to create that impression. Let me ask you this question,—the pressures on the east side are going down, are they not?

A. Yes; on the east side; and the pressures in the field as a whole are going down.

Q. And if the production on the east side were restricted somewhat below what it is now, the tendency would be to hold up those pressures, wouldn't it?

A. Yes; if you restricted the pressure on the wells in the east side, or if you restricted the pressure on the wells in the center, it would help to maintain the pressure on the east side.

Q. With respect to those figures of Mr. Hart which he questioned you about,—that density of drilling—that little sheet you had there of one page—Dr. Patten, have you ever calculated the number of wells that have been drilled in that [fol. 535] field on tracts of less than two acres or tracts that have been drilled to an average density of less than two acres?

A. This figure that has been given here, which I can add up for you—it is approximately 2,000 wells; possibly a little more.

Q. 2,344 it will figure, won't it?

A. Yes; I think so.

Q. Have you ever calculated the sand thickness or the acre-feet of sand under those wells?

A. No; not those particular wells.

Q. We have it here from one of the exhibits as 112,000 acre-feet of sand, with a production of 50,000 barrels of oil per day?

A. Yes, sir.

Q. You are not in position to verify those figures—you have not checked them?

A. No.

Q. Well, Dr. Patten, you recognize, do you not, that the result of that is that those wells are allowed to produce—those densely drilled leases, in the applications of this order are allowed to produce, three or four times as much per hundred acre-feet of sand as the other leases are or the average of the field?

A. Yes, sir; those particular leases are, that is correct.

Q. Now, this Rowan & Nichols tract of land is producing 10.11 barrels per day per 100 acre feet of sand. The average of the field is 13.28, according to our figures, per 100 acre-feet of sand. Would you regard the Rowan & Nichols lease as very much better than the average of the field, assuming the facts stated here to be true that it has 90 feet of sand, and 1115 pounds bottom hole pressure, and that those wells [fol. 536] of potentials ranging from 960 to 965, and that it is located in the Fairway.

A. Yes; I would consider it to be better, and that it will produce longer and will under the present formula get a higher allowable while producing.

Q. If the Railroad Commission was not in the business, and there was no other regulation agency to regulate the production of oil in the East Texas Field, would you think it was a very desirable piece of property? It would be one of the most productive properties in the field, wouldn't it?

A. Yes, sir; it would.

Mr. Moody: I believe that is all.

Questions by Mr. Baker:

Q. Dr. Patten, I want to ask you two or three questions. Do you believe, that it is advisable to maintain the pressures in the East Texas Field?

A. I believe if it can be done, we should try to recover all of the oil in the field before the pressure has declined

to such a point that any large percentage of gas would come out of solution.

Q. Isn't that the reason why the Railroad Commission is maintaining pretty rigidly the top allowable at about the present figure?

A. Yes, sir; that certainly is true.

Q. In order to do that, if the water production were material to increase, it would be necessary to decrease the top allowable production of oil for the field in about the same ration, would it not?

A. If the water production in the field were to increase, [fol. 537] as the data which we used in that calculated curve indicated that it probably would, and no water is returned to the reservoir, the allowable for the field would have to be decreased to such a point that in five or six years it would be producing very little oil and nearly all water.

Q. About 20 per cent of the water is being returned to the reservoir at this time?

A. About 20,000 barrels per day, I think.

Q. Out of approximately 200,000?

A. Yes, sir.

Q. All right. Of course, this returning program is entirely voluntary?

A. It is up to the present time, although the Commission has expressed an interest, and has called one hearing in which they did consider evidence as to the necessity of requiring the return of water to the reservoir.

Q. You think it wise to maintain the top allowable at approximately the present figures?

A. I would say this,—if we can do it, we should try to produce the oil in that field without allowing the gas to come out of solution, or at least any appreciable portion of it. Of course, it is not practical to do it without any gas at all coming out of solution.

Q. I want to ask you a question about your chart over here, Defendant's Exhibit No. 5. Will you please state what percentage of those wells receive 25 barrels a day or less?

A. I will have to go over to the chart.

Q. You did not add those percentages up?

A. I don't have that. I could approximate it. It appears to be a little over 50 per cent.

[fol. 538] Q. Then, slightly under 50 per cent would produce less than 25 barrels per day?

A. That is correct.

Q. Refer to this other chart, Exhibit No. 6. You show here a graph that indicates an increase in the Humble's allowable for some of its wells.

A. That graph does not show an increase of allowable for Humble's wells. This is a comparison between the number of Humble's wells having these allowables and the total number of wells in the field having those allowables.

Q. That is due to the situation of the Humble's wells on the structure, especially with respect to the Fairway?

A. It is a result of the product of acreage times potential times bottom hole pressure times sand thickness, which is in general larger for the Humble wells than for the field as a whole.

Q. It would be much higher than that, would it not, if you did not have this 20 barrel minimum?

A. Yes, sir; the Humble would get a higher percentage of the allowable in the field, if there was no 20 barrels minimum, I believe.

Q. Dr. Patten, you said that you could not determine the number of acre-feet of sand with absolute accuracy, but don't you think that can be determined with a fair degree of accuracy?

A. Yes; the number of acre-feet can be obtained more accurately than most of the other factors, if you have sufficient information all over the field. There are parts of the field which we frankly have very little control of, as we have had to make a number of adjustments as we gathered [fol. 539] further information. Since I first made that map we have had to make adjustments here and there, and there are a number of those where we still are somewhat undecided about—that is how to interpret it.

Q. The construction of these isopach or sand-thickness maps on the basis of a large amount of data is considered to be about as accurate from the engineering standpoint as many other things that you do in oil fields, isn't it; for instances, determining potentials by contour maps, and determining pressure by contour maps?

A. It won't be as accurate as pressure determinations by contour maps in the East Texas Field, but it will be about the same order of accuracy as the determination of the potentials.

Q. The possible errors in compiling one of these isopach maps is not anything to compare with the differences in

allowable for adjoining tracts under the existing order, as for instance, the allowable to one tract of five acres with one well on it and an adjoining tract of five acres with five wells on it?

A. In answer to that question, I would have to ask you what portion of the field. In the western portion of the field you could have an error of 100 per cent or more, that is where the sand is very dense, in determining.

Q. Maybe I did not make my question clear. I mean to take two five-acre tracts, side by side, there on the west side of the Fairway, on the east side, except that in that little margin on the east where the sands are very tight, your differences are very great in allowable where you have two five-acre tracts side by side, one with one well on it, [fol. 540] and one with five wells on it, in the order of one to five, isn't it?

A. I don't believe that it would work out in the Fairway one to five.

Q. Well, or one to three?

A. Assume it was one to three, and in that particular portion of the field, say the Fairway, two adjacent tracts, you could determine the relative sand thickness under those tracts much more accurately than the extent of three to one, that is true.

Q. Would you consider that you could determine the accuracy within a margin of 10 per cent of error?

A. In some instances.

Q. General-- speaking?

A. You will find discrepancies much wider than 10 per cent.

Q. I mean in compiling your whole map there?

A. That is in the total figure?

Q. Yes, sir.

A. Of course, I did not make the map, and I couldn't tell you exactly how accurately it is, but I would say the total figure might be off 10 or 15 or 20 per cent.

Mr. Baker: That is all.

Questions by Mr. Moody:

Q. One further question. Dr. Patten, if the Rowan & Nichols Todd A lease was prorated on the basis of the formula without the 20 barrel minimum, it would get sub-

stantially more oil than it does get under the present method of applying the order in the field?

A. Yes; it would get more than it is getting at the present time, and more than it would get if it were prorated on the [fol. 541] basis of acre-feet of sand.

Q. And that is because it has bottom hole pressures above the average of the field, and because it also has high potentials above the average of the field?

A. Yes. You see the reason for that happening is that as between two wells in the sand having say constant permeability if the sand thickness in one well is twice as great as the sand thickness in another well, and both wells, completely go through the sand, then the producing ability of the wells, at least as to the sand, will be as two to one. If you have twice as much sand, you will have twice as much potential in addition. Multiplying the two together the result is that portion of the allowable is concentrated more to those wells in the Fairway.

Judge Sibley: It accumulates it?

A. Yes, in the Fairway.

Q. And under openflow, why this tract would have considerable advantage over other parts of the field?

A. You mean produces more oil—yes, more than the average of the field would produce.

Mr. Moody: That is all.

Redirect examination.

Questions by Mr. Hart:

Q. Dr. Patten, you don't mean that they would produce more oil under open flow than they would be allowed to produce under proration, do you?

A. No; I understood Governor Moody's question to be whether or not they would produce more oil under open flow conditions than the average well under open flow conditions. That possibly is true. I doubt whether they would [fol. 542] produce more oil than they would produce under the proration formula.

Mr. Hart: That is all.

Judge Sibley: We will recess until nine o'clock in the morning.

(Thereupon at 5 o'clock P. M., Thursday, February 15, 1940, the Court recessed until 9 o'clock A. M., Friday, February 16, 1940.)

[fol. 543] Friday, February 16, 1940

Morning Session, 9:00 o'clock

J. S. HUDNALL, called as a witness by defendants, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Hart:

Q. State your name.
A. J. S. Hudnall.
Q. Where do you live?
A. Tyler, Texas.
Q. What is your business or profession?
A. Petroleum geologist.
Q. Mr. Hudnall, will you state your training in your profession—your education and training?
A. I graduated with a Bachelor of Science degree from the University of Kentucky, and had one year's post-graduate work at the School of Mines, Pennsylvania State College; and one year of post-graduate work at the University of Chicago, majoring in geology and engineering in all the courses and schools.
Q. Have you had practical experience in the practice of your profession as an engineer and geologist since having that academic training and education that you have spoken of?
A. Yes, sir; I have had approximately twenty years' practical experience. The first work I did was wit the Kentucky Geological Survey, which survey correspc ded to the Conservation Department of the State of Kent cky now; and at that time the work was very largely oil and gas [fol. 544] work. Following three or four years of experience that I had with the Kentucky Geological Survey, I did some work for independent operators; and following that I came to Texas in about 1925, and I have been practicing in Texas continuously since that date.
Q. Have you had any experience in connection with the East Texas oil field, and if so, state what that experience has been.

A. I moved to Tyler in January, 1931, and opened an office at that time, and made a complete survey of the field on the ground, and have continuously studied the field progressively since that time, spending some 80 per cent of my time in the last nine years studying that field.

Q. I believe you stated that you live in Tyler?

A. Yes, sir.

Q. Is that in the vicinity of the East Texas field?

A. It is approximately nineteen miles west of the field.

Q. Will you state briefly what information has been available to you—what information you have studied in making your studies and in arriving at the conclusions you have reached about the East Texas field?

A. The first studies I made of the field was to make a map of the field on the ground. Following that and during this time, elevations were run to most of the wells in the field at that time. Following this, detailed records daily were kept on the individual wells as they were completed, and the structure of the field was worked out, the sand conditions were studied, and water production figures, gas-oil ratios, and, in general, keeping up on the engineering features of the field.

Q. By the way, when was the East Texas field first opened up?

[fol. 545] A. In October, 1930, the first well was completed.

Q. Do you know whether or not there was any proration in the East Texas field at the time it was first opened up?

A. No, sir; there was no proration in that field until May 16, 1931, which was the effective date of the first proration order. It was issued in April, and was effective in May, 1931.

Q. Do you recall when the per well potential order, which was upheld by the Federal Court, went into effect?

A. Yes, sir; April 24, 1933, that order went into effect.

Q. Prior to that date I will ask you if there were intervals of time between 1931 and 1933, when there was no effective proration order and the field was produced substantially wide open?

A. The field reached a production of a little over a million barrels a day in July, 1931. Immediately following that, the field was shut in by the military authorities on August 13, 1931, and stayed shut down until September 5, 1931. At

that time it was opened up with a daily allowable per well of 225 barrels.

Q. Do you know whether or not, Mr. Hudnall, it is a generally recognized fact that oil is run in the East Texas field that has been produced in excess of the allowable permitted by the orders of the Railroad Commission?

A. I did not get the latter part of your question.

Q. Is it a generally recognized fact that oil has been produced in the East Texas field in excess of the amount permitted by the orders of the Railroad Commission—what is commonly known as "hot oil"?

A. Yes, sir; that is generally known. Estimates as to that amount range from one hundred to one hundred fifty [fol. 546] million barrels of production in excess of the allowable production during the life of the field.

Q. Do you know how many wells were over in the East Texas field prior to April 24, 1933, which, I believe, is the date of the first effective order upheld by the court?

A. About 9200; that is close to it.

Q. That order which went into effect in April, 1933, was what kind of order?

A. The order that went into effect at that time was a straight per well potential order based upon testing a number of key wells distributed throughout the reservoir, from which key wells the estimated potential of the other individual wells was determined. The order had a minimum allowable of 40 barrels a well at that time.

Q. Then you say there were about how many wells drilled at that time?

A. About 9300, and the top allowable of the field at the time the order was issued was about 650,000, but it climbed up to 815,000 by May.

Q. The excess of the allowable, then, in effect, was distributed on a purely potential basis, wasn't it? That was the one factor considered at that time?

A. Yes, sir; and the wells were given 15 per cent of one hour's potential for their daily production.

Q. How long did the well potential method stay in effect in the East Texas field?

A. Until August, 1939, when the present order took its place.

Q. The order spoken of is the order of September 11, 1939?

A. Yes; but the other one expired in August, and they had a two weeks' shutdown then.

Q. Will you state, in general, whether the new order,— [fol. 547] that is, the order of September 11, 1939, and subsequent orders that have been based substantially on that same formula, whether the increase in proratable oil that is distributed under the factors in that formula has gone principally to the wells in the center of the field, wells on the better tracts, or the wells on the poorer tracts?

A. The major portion of it has gone to the tracts with the larger acre-feet of sand and a higher potential, generally speaking, in the middle of the field.

Q. Now, Mr. Hudnall, have you prepared some maps here showing certain features of the East Texas field which you believe to be relevant on the question of the producing life of the various portions of the field and the various leases in the field?

A. Yes, sir; I have prepared such a map.

Q. Are those maps up there on the board?

A. Yes, sir.

Q. They have been marked as Defendants' Exhibits 11, 12, 13, and 14, Defendants' Exhibit No. 11 being on the right. Have you prepared all these Exhibits Nos. 11 to 14, inclusive?

A. Yes, sir.

Q. And do you believe them to be accurate?

A. Yes, sir; they are substantially accurate.

Mr. Hart: We want to offer all those maps in evidence at this time.

(Thereupon, Defendants' Exhibits 11 to 14, inclusive, above referred to, were received in evidence.)

Q. Will you state whether or not Defendants' Exhibits Nos. 11 and 12 show, each of them, a complete picture of the field, or whether you have to combine the two to get a complete picture?

[fol. 548] A. You have to combine the two.

Q. Explain that.

A. The one on the right is the north half of the field, and the one on the left is the south half of the field. Combining the two, you get a complete picture of the entire field.

Q. Will you step over to the board and explain to the Court the significance of the various colored areas on that map?

A. The black area is the area of the Humble leases.

Q. On the map, Defendants' Exhibit No. 11, has the Rowan & Nichols lease been colored in there to show its location, the Rowan & Nichols Todd "A" lease?

A. Yes; it is colored in brown.

Q. Go ahead and explain what those various colors, in addition to those you have already explained, show there.

A. The map shows the structural contours of the field, and the location of the wells that are making water are shown in the red border on the west side.

Q. Is that shown on Defendants' Exhibit No. 11, too?

A. Yes, sir; both colors correspond. That is, the colors on the two maps are exactly alike. The green color is the area in which the wells are now pumping wells. There are a few scattered pumping wells on the west side of the field outside of the area making water, that are not shown individually; and in addition to that, a very large per cent of all the wells that are making water are pumping wells, but they could not be shown both red and green, so inside the red there should be considerable green, if shown that way.

Q. In order to get the entire pumping area of the field, you would have to combine the red and green areas?

A. That is correct. And in addition to that, there is [fol. 549] shown in a lighter red color the area that has been plugged and abandoned. Those are shown both on the east side and on the west side of the field, and the pink color inside the green are areas where wells have been plugged and abandoned, and also a paler pink, but the same color as before, is on the west side of the field, but does not show up as prominently. Likewise, on Exhibit 11 is shown the plugged and abandoned area in the Gladewater townsite. That is an inset map, which takes up a relatively small portion on the same exhibit shown with the Gladewater, but the inset is a very much enlarged portion of the same map.

Q. Mr. Hudnall, now, will you explain to the Court what that map shows with reference to abandonment in the field, as to what abandonment will be caused by, and where abandonment may be expected in the future, and how the field will be depleted?

A. During the last nine years of the producing life of the field, a certain history has been obtained which serves as a very substantial guide to the future history of the field. During this period there has been 613 wells plugged and abandoned. Approximately 450 of these are on the west side of the field, and the remaining portion on the east side. There are between one-third and one-fourth of the abandonments on the east side, and between two-thirds and three-fourths of the abandonments on the west side of the field; and the location of these wells shows very clearly that they are on the margin of the field; and the usual history is that preceding the time they are plugged and abandoned, they become pumping wells, so that by looking at the green area on the map we can see where the next aban- [fol. 550] donments are going to be on the east side of the field; and by looking at the red area on the west side of the field, we can pick out the area where the next plugged and abandoned wells will occur, in general, in the west part of the field.

Q. Mr. Hudnall, explain briefly what causes the abandonments on the west side—what physical facts; and what causes abandonments on the east side?

A. There are two physical features of all oil wells, regardless of where located. The first of these features is that they are drowned out by water; and the other is that they die from the loss of pressure. One of the two of these causes is the cause of the natural abandonment of any oil well. In general, the history that they go through on the west side of the field is that the wells start out making a small per cent of water, and this percentage of water increases until such time as they become unprofitable to operate. The wells never completely exhaust the oil in either the east side or the west side, but merely decline to where they are unprofitable to operate, and there is still left oil after that abandonment.

Q. Will the water gradually encroach on the western side of the field towards the center?

A. Yes; undoubtedly, there will be progressive encroachment from the west to the east side of the field.

Q. As the water increases, will it be true that the wells in the center of the field will go to making water and go on the pump, just as the wells over on the western edge have done?

A. Yes; that is true with this explanation, that where you have as much as 60 or 80 feet of sand section and the well starts making water, when it has been drilled largely [fol. 551] through this section of sand, it will produce for many years before it goes entirely to water, because the water will have to rise through this entire section before it will entirely flood the well. On the west side the wells will go to water much more quickly, relatively, than in the center, because of the thinner sand section, even though they were both making exactly the same percentage of water at one time.

Q. Have you worked out the percentage of wells in the whole field that are making water or that were making water at the date that map was made?

A. Yes, sir; there are 4,405 wells in the field making water, representing approximately 17 per cent of all the wells in the field.

Q. As of what date is that figure given?

A. As of November, 1939. That data is from the Railroad Commission's water report as of that date.

Q. Do you have the number of wells and the percentage of Humble wells that are making water?

A. Yes, sir, there are 109 Humble wells making water, representing 4.3 per cent of all their wells.

Q. Are any of the Rowan & Nichols wells making water?

A. No, sir; and no wells in that vicinity are making water.

Q. Do you have the number of pumping wells in the field, and the percentage of pumping wells in the field?

A. There are 6,788 pumping wells in the field, representing 26.4 per cent of the total number of wells in the field. The Humble Oil & Refining Company has 267 pumping wells, or 10.5 per cent of their wells are pumpers,—a little less than half of the same percentage that the field has.

Q. Do you have there the figure for the wells abandoned to date in the East Texas field?

[fol. 552] A. Yes, sir; there are 613 wells that have been plugged and abandoned in the East Texas field.

Q. How many wells have been abandoned on the Humble leases to date, according to the information that you have?

A. According to my records, there have been 14. If the Humble wells had been plugged and abandoned in the same rate as those in the whole field, there would be about 260.

Humble owns about 10 per cent of the wells in the field, and 10 per cent of the total would be about 260.

Q. Look at Defendants' Exhibit No. 13. State what kind of map that is.

A. That map shows the structural contours of the entire field, and the colored area represents the zones in which the structural contours prevail.

Q. That is contoured on top of the sand?

A. Yes, sir; that is the contour on the top of the Woodbine formation.

Q. On which side of the field are the lowest contours found?

A. The lowest contours are found on the west side of the field where the sub-sea elevation is approximately 3,320; and the highest is on the east side, where the highest is about 3,140. The 3,180 and all the area above 3,180 is shown in red color. The purpose for showing that, within the extreme south end of the field there is another area above that, so that it represents a small part of the field, and it is the area in which most of the wells that have been plugged and abandoned on the east side are located.

Q. Are the sands down in the south end permeable enough so that it can be expected that any oil will migrate to this section from other portions of the field?

A. A very small portion of it will migrate into that. The [fol. 553] fact that you have a red area and a green area coming very close together in the south end clearly shows that that will be the first part of the field, as a whole, that will go out of the picture. That is disregarding the edges of the field and looking at it from a north and south viewpoint, the south third will go out of development long before the north part will.

Q. Is the Rowan & Nichols lease shown on Defendants' Exhibit No. 13?

A. Yes, sir; the Rowan & Nichols lease is shown in a deep red color in the west part of the survey there, and the map shows that if the water table did rise on a horizontal and continued to rise until the Rowan & Nichols leases were flooded, that there would be approximately 90 per cent of all the field flooded before that occurred.

Q. Is that taken into consideration in the abandonments on the east side?

A. No, sir.

Q. By reason of pressure getting so low that the wells cannot operate?

A. No, sir; that does not take into account any abandonments whatsoever on the east side. If the abandonments were added on the east side, the effect would be to place the area that was last producing at that time in less than 5 per cent of the total field. In other words, 95 per cent as a minimum would be depleted before that area would be flooded with water or die from lack of pressure on that basis.

Q. Of course, none of the Rowan & Nichols wells have been abandoned up to date?

A. No, sir; they have not been abandoned up to date.

[fol. 554] Q. Considering all of the facts you know about the field, in your judgment, and assuming that the present rate of production and the present methods of proration continued in effect, about how long will it be before the Rowan & Nichols wells will be making water?

A. I think it will be——

Mr. Baker: May I ask what he means by "present rate of production"? Does he mean present rate per well?

Mr. Hart: I mean present total daily production from the field—assuming the same average daily production from the field.

Mr. Baker: During all of the balance of the life of the field?

Mr. Hart: From now on, yes, sir.

Mr. Baker: Even when they have one well producing?

Mr. Hart: I think my question is based on the same assumption as yours.

Judge Sibley: It is an untrue and impossible assumption.

Mr. Hart: I was going to make the same assumption that they made, in order to attack their opinions about what is going to happen in the field.

Mr. Baker: We have never assumed that the daily top allowable would be maintained at 690,000 barrels a day or above, except to show a rate of depletion. Now, our assumption has always been if this present order stays in effect during the balance of the producing life of the field, that the wells will severally maintain the same allowable that they severally have under this schedule until they pass out of the picture.

[fol. 555] Judge Sibley: I don't remember whether you proved it or not, but there were some maps that undertook to show how many years it would be before exhaustion took place.

Mr. Baker: That was Mr. Buck who testified about the constant rate.

Judge Sibley: The same assumption was made in the question yesterday. I thought at the time it was an impossible one, but still, it had some illustrative value.

Q. Mr. Hudnall, making that assumption, in your judgment, how long would it be before the Rowan & Nichols wells would be making water?

A. I think it would be at least ten years before the water got under their lease. I have not examined the exact total depth of their wells; but after it got under their leases it would have to rise an additional 100 feet, and at the rate it has been rising in the past, it would take some 50 to 75 years to flood it.

Q. Now, Mr. Hudnall, considering all of these facts that you have stated about the past history of the field as to abandonments and depletions and water encroachment and drop in pressure and all those facts, and considering your experience and study of the field, what would be your opinion as to the relative producing life of the leases of the Humble Oil & Refining Company?

A. The Humble Oil & Refining Company leases will undoubtedly produce considerably longer than the average leases in the field.

Q. What about the producing life of the Rowan & Nichols Todd "A" lease?

A. It, likewise, will produce considerably longer. In fact, [fol. 556] I think that lease will be within the approximate last days of production of the East Texas field. It may be that production will last a little longer immediately to the east or to the west of it, but it will be reasonably close to that lease.

Q. Considering all of the facts that you know about the East Texas field and your study of it, in your opinion, under the present plan of proration, assuming that it will continue in effect, will the Humble Oil & Refining Company be given a reasonable opportunity during the producing life of its leases, to recover an amount of oil substantially the equivalent of the oil now in place under its leases?

A. I think they will.

Q. Considering those same facts, I will ask you whether or not, and making the same assumptions, of the continuance of the present proration order, will the Rowan & Nichols Todd "A" lease with the wells that it has now on it, be given a reasonable opportunity to recover an amount of oil substantially the equivalent of the amount of recoverable oil now in place underneath its leases?

Mr. Moody: I object to that question, because that is not the test that the courts have laid down.

Mr. Hart: What is the test, then?

Mr. Moody: Well, I don't think that is it, and I object to it for that reason.

Judge Sibley: The chief objection to the question is that it asks the witness to decide the case.

Mr. Moody: It is also the issue to be passed on by the Court.

Mr. Hart: They have given their opinion.

Judge Sibley: You could ask him if during the time the [fol. 557] lease will have to go, it will have an opportunity to produce its reserve.

Mr. Hart: To produce an amount of oil substantially equivalent to the amount of recoverable oil underneath the leases.

Judge Sibley: You insist on using a legal formula, that I think is a little objectionable where a Court has to decide according to that very thing. I think it would be better to put simpler questions to an expert. Ask him how long this lease will live, and how much it will produce in that time under this formula, and whether in the aggregate it would get its fair proportion.

Mr. Hart: I was afraid to use the word "fair".

Judge Sibley: Yes; that does make trouble.

Mr. Moody: A further objection that I want to make to this question and to this line of questions is, that an operator in the East Texas field is entitled to a present enjoyment of his property, and except as it may be necessary in order to prevent waste by reasonable exercise of the police power to accomplish that end, the Railroad Commission does not have any right to postpone indefinitely that man's right to enjoy his property.

Judge Sibley: That is a law question, too. You can prove by him whether they were getting their pro rata this

year, and he can prove whether he thinks they will get it over a period of time, and the Court will have to decide which theory is right.

Mr. Moody: The point of my objection is that testimony that he can in one hundred years from now, or fifty years from now, or twenty-five years from now, get his part of the oil, I think, is irrelevant and immaterial.

[fol. 558] Judge Sibley: I don't think it is immaterial. This field has a long life, and I think that is a factor to be considered. I believe the statute uses the word "reasonable", doesn't it?

Mr. Hart: Yes, sir, the oil must be prorated among the producers in the field on a reasonable basis.

Judge Sibley: Yes, sir.

Mr. Baker: I object to the question propounded with respect to the Humble's leases' ultimately recovering their share on the same grounds that Governor Moody stated; and on the further ground that he has not clarified his assumption. We cannot tell what he means. He says, "If the present order remains in effect." Does he mean by that that each individual well, as long as it can produce, will continue to be permitted to produce what it is presently producing, or does he mean that regardless of the number of wells will not the allowable for the field remain just exactly the same, which everybody knows is an utter impossibility. Now, I think in all fairness to us, he ought to clarify his question.

Judge Sibley: I think it ought to be clarified probably; but you all have undertaken to do some prophesying through your witnesses, and now he is entitled to come back with a contrary prophecy.

Mr. Baker: That is correct; but we would like for him to define his terms.

Judge Sibley: I think so; and I don't like these complicated questions that roll it all up in one question and put it up to the witness to decide.

Q. Well, Mr. Hudnall, I believe you have stated as to whether or not the Rowan & Nichols leases will have a long [fol. 559] producing life?

A. Yes, sir; that lease will have a long producing life, any way it is produced.

Q. I believe you said it would be in the neighborhood of that portion of the field where the last production would take place, is that correct?

A. That is correct.

Q. Now, in your judgment, will the amount of oil produced from the Rowan & Nichols lease be or not an amount of oil substantially equivalent to the recoverable oil now in place under that lease?

Mr. Moody: Are you asking that about the Rowan & Nichols lease?

Mr. Hart: Yes, sir.

Mr. Moody: I think that is asking the witness to roll the case up and decide the issue here before the Court, and I object to it. And I furthermore object because it does not state the legal measure of the rights of an operator in the East Texas field.

Judge Sibley: I don't think he has any business in stating a legal measure; but if he means that this lease has a better chance to get its oil out under a proration order like this than the average lease has, I don't see why that cannot be proved.

Q. Answer the question, as put by Judge Sibley, please, sir.

A. I think they have a reasonable chance to do that. You can't figure out to mathematical exactitude just how much any lease will produce. I think it will come within engineering accuracy of what you can estimate it will produce within a few per cent. You can't estimate it any closer than 20 or 25 per cent.

[fol. 560] Q. Considering all the facts, do you think the probabilities are that it will produce more or less?

A. I think the Rowan & Nichols lease will produce approximately that; it may produce some more or some less. I don't think you can estimate exactly what it will produce.

Q. Now, following Governor Moody's suggestion, I will ask you this question. Suppose, Mr. Hudnall, that the field were prorated on the basis which would give to each lease in the field currently as each proration order was written, each month an amount of oil in the proportion that the reserve or the acre-feet under each lease bore to the reserve of acre-feet of net sand under the whole field. Do you understand what I am talking about?

A. Yes.

Q. In other words, suppose we adopt the formula that each time the Commission would have to give each lease a percentage of the allowable proportionate to the acre-feet

of net sand under that lease, and suppose a formula like that were adopted from now on, what would be the effect of that as to whether each property in the field would recover an amount of oil equivalent to the amount of recoverable oil in place under the tract, or recover more, or recover less of that?

A. The effect of that would be undoubtedly to give some leases considerably more than they now have, and to take away from others. It can be better illustrated this way,—assume a lease has twice the reserves under it as the average of the field, and you currently give it twice the allowable, in proportion to the rest of the field, and that it turns out at the end under those conditions it produced twice as long; it would obviously come out with twice as much oil.

[fol. 561] Judge Sibley: In other words, the time element, you think, ought to be considered?

A. It certainly has to be. Any formula that does not consider that can't possibly give to the leases what they have under them, because that very situation assumes they will all be abandoned at the same time.

Mr. Moody: May it please the Court, Mr. Hart in his question said it was suggested by me, that I have suggested here that properties ought to be allowed to produce in proportion to what they had, but I don't understand that I have said or suggested that the Commission ought to each month prorate it. I would like for Mr. Hart to take that as his own question. In other words, I don't want to be in the position of letting a charge made in my presence go undenied.

Judge Sibley: Yes, sir, it will be considered that that is Mr. Hart's question.

Q. Suppose they didn't give that percentage each month, but they fixed the percentage now on the basis of the percentage of recoverable reserves, now, and then kept that same percentage from now on. What would your answer be as to how much oil would be produced by the leases in the field as related to the recoverable now in place underneath them?

Mr. Hardwicke: Just a moment. Mr. Baker was busy and didn't hear that. Are you still talking about the Rowan & Nichols lease, or are you talking about everybody?

Mr. Hart: I am talking about the whole field. The order has to be applied to the whole field.

Mr. Hardwicke: Irrespective of the properties on the structure? Any conceivable combination of facts? That is what the question is?

[fol. 562] Mr. Hart: I think the question speaks for itself. Mr. Baker would like to have that question read.

Q. (Reporter reading:) "Suppose they didn't give that percentage each month, but they fixed the percentage now on the basis of the percentage of recoverable reserves, now, and then kept that same percentage from now on. What would your answer be as to how much oil would be produced by the leases in the field as related to the recoverable now in place underneath them?"

Mr. Baker: I would like to state the further objection that he doesn't state which lease in the field.

Judge Sibley: He is trying to get the witness to say something about all of them. That can't be true about all of them. Some would profit, and some wouldn't.

Q. Is that your answer?

A. Yes, sir.

Mr. Moody: I object to that because it has no practical application to this case.

Mr. Hart: I think it has a very material application because, as I understand it, some of them are contending——

Judge Sibley: It goes to show that the Commission has a very complicated and difficult problem to handle. Whether they have handled it reasonably or not is, of course, a question. I think you can ask the question. It has been answered.

Mr. Hart: All right, Your Honor, I will go on.

Q. Mr. Hudnall, do you know approximately how many marginal wells, that is, statutory marginal wells, pumping wells, incapable of producing twenty barrels per day, there are in the field now?

[fol. 563] A. Between 500 and 600. I don't believe I have the exact number with me.

Q. I will ask you if those wells are generally located on the edges of the field?

A. Generally they are located on the edge of the field, or at least, in the pumping areas, although some of them are offset by flowing wells.

Q. Now, does the fact that the Commission has permitted those marginal wells to produce each day instead of having

to be shut in on shutdown days, does that have any appreciable effect on the recovery of oil by the rest of the wells in the field?

A. It would tend to drain some of the oil where it was offset by wells that had a larger allowable.

Q. Take the leases in the middle of the field like the Rowan & Nichols and Humble leases and Mr. Fischer's lease, would that have any appreciable effect on them?

A. If you consider the field as a whole, the effect would be very small and the effect that I spoke of would be local, a local effect around the particular well that had the advantage over the other.

Q. Isn't it true that as the field is produced, every well in the field is going to get down to being a marginal well some time or other?

A. Yes, sir, that is the life history of an oil well.

Q. And everybody is going to get the benefit of that eventually if the same method is kept in effect from now on?

A. That is true.

Q. Now, Mr. Hudnall, I believe I will ask you to step down again and make an explanation of Exhibit No. 14, Defendants' Exhibit No. 14.

[fol. 564] A. Yes, sir.

Q. Did you prepare that map, Mr. Hudnall?

A. Yes, sir. It was prepared in my office under my direction.

Q. Now, you have shown on there the red area along the west side of the field and the green area along the east side of the field?

A. Yes, sir.

Q. What are those areas intended to represent?

A. Those areas represent the extensions that have been made to the field since January, 1934. In other words, the field as it was developed in January, 1934, was the white area in between the red and the green, and since that time around the margin of the field there have been drilled these additional wells, and these extensions to the field were made.

Q. That is, it represents an extension in the developed area in the field, is that correct?

A. Yes, in the developed portion of the field. Some of this area was indicated at that time as being productive, but had not at that time been developed.

Q. Approximately how many wells have been drilled in that area during the period of time you have spoken of, which I believe is since January 1, 1934?

A. Approximately 3,550 wells.

Q. Do you know how many acres is represented in those areas?

A. I haven't made the exact calculation by perimeter, but generally it is drilled on about a well to seven or eight acres, and on a density of eight acres it would represent approximately 30,000 acres. There has been somewhere between 25,000 and 30,000 acres added to the periphery of the field since that date.

Q. Have you estimated the average recovery, average [fol. 565] ultimate recovery in barrels of oil from those wells that have been drilled in those areas?

A. In general they run about 30,000 to 40,000 barrels per well. That is about as close as I could make it without going into a detailed calculation on individual wells. That calculation is based upon the fact that this is in the thin section of the field where, in general, it would be from ten feet maximum down to zero thickness, or an average of around five feet.

Judge Sibley: They are all in the water now, pumping wells?

A. Substantially all of them are now the wells that are making water and pumping wells.

Q. Are any of the wells on the east side making water?

A. No, none of the wells on the east side are making any water, that is, any appreciable water. They make a little seepage water. That is not Woodbine water.

Q. Then where they have gone on the pump is due to pressure, not water?

A. Yes, sir, the pressure reached the stage where they will no longer flow.

Q. What will be the ultimate total production from those wells?

A. It will be in the vicinity of 100 to 150 million barrels of oil.

Q. What would you say, Mr. Hudnall, with reference to whether those wells will produce oil or have produced oil which could not have been produced through any other wells and which would have been lost if those wells had not been drilled?

A. I think that if those wells had not been drilled, that a substantial amount of the oil that they will produce would have been lost.

[fol. 566] Q. Now, Mr. Hudnall, is there any relationship between a minimum or base allowable to be assigned to the wells, and those wells that have been drilled in that area and that are producing that oil that you are speaking of?

A. I think to be able to go in and explore and develop and produce from areas like this, that you must have a minimum upon which to operate. Now, in addition to the cost of drilling these wells, there has to be considered the fact that they have drilled 121 dry holes in outlining this area, and these dry holes must be considered as a part of the necessary cost of developing and producing these wells, and that in addition to that there have been 201 already plugged and abandoned that were one time producers.

Q. Considering the shutdown days, what is the average of the base or minimum allowable which is assigned to wells under the present order of the Railroad Commission?

A. Approximately 11.7 barrels daily average over a thirty day period.

Q. What is your judgment as to whether or not there would be premature abandonments if the Railroad Commission—premature abandonments of wells if the Railroad Commission were to cut down this base or minimum allowable below the figure at which it now is?

A. I think any substantial reduction below this amount would cause premature abandonment of a number of the wells on the west side of the field where they are making a high percentage of water.

Q. If you cut down that base or minimum allowable, would there be any reduction in the expected life of these pumping wells?

A. Yes, sir, they would be abandoned earlier than they [fol. 567] would be with a higher allowable.

Q. Now, have you considered generally—there has been some talk about densely drilled areas in the center of the field where the sands are thick. Do you know whether or not they constitute a large percentage or a relatively small percentage of the leases in the center of the field where the sands are thick?

A. It is relatively small. The areas that are most densely drilled are in the Kilgore townsite, which is on the east

side of the field. That is the largest area that is real densely drilled. Then in the London, which is in the middle of the field, there are 200 acres that so far as the 200 acres is concerned, it is more densely drilled than Kilgore townsite, but the Kilgore townsite covers approximately 2,000 acres, that is, Kilgore townsite and the area surrounding it that is affected by the density.

Q. Are there abandonments over there in Kilgore?

A. Quite a number of abandonments east of it; and on the west side of the field the largest densely drilled area is Gladewater townsite, and approximately a third of those wells have been plugged and abandoned.

Q. Generally speaking Mr. Hudnall, will the densely drilled areas have a shorter producing life than the less densely drilled areas in the same position on the structure?

A. Generally speaking, they will have a shorter life, although if they are out in the middle of the field, there won't be much difference.

Cross examination.

Questions by Mr. Baker:-

Q. Mr. Hudnall, you spoke of the order of May, 1933, I believe?

[fol. 568] A. Yes, sir.

Q. You spoke about a forty barrel minimum under that order?

A. Yes, sir.

Q. Are you sure that it had a forty barrel minimum?

A. Yes, sir.

Q. The marginal well law was a forty barrel law at that time, was it not?

A. That is correct. That was changed, and in June, 1933, it was reduced to twenty barrels. The marginal well law may have been different, but that is the way it was put into effect in the East Texas field.

Q. I believe Mr. Hart spoke of that case, the proration order being upheld in that case. You know it to be a fact, do you not, that that case never was tried on its merits?

A. Yes, sir.

Mr. Hart: I was speaking of the Amazon case. That was tried—yes, sir, that is true; that particular case, Rowan & Nichols case, was not tried on its merits.

Mr. Hardwicke: The Amazon didn't involve distribution.

Mr. Hart: I disagree with you. I think it emphatically did. A potential order was upheld.

Mr. Hardwicke: The case will speak for itself.

Judge Sibley: Yes, sir.

Q. Now, Mr. Hudnall, I believe that you said that under the order of May, 1933, the top allowable was how much?

A. It started out with about 662,000 barrels a day at the time it was issued, and by May it reached 815,000 barrels per day.

Q. 815,000?

A. That is correct.

Q. Now, you said that the per well allowable was forty [fol. 569] barrels, I believe?

A. The minimum. You see, they had a minimum, and then the amount above that was allocated on a potential basis.

Q. Yes, and that was fifteen per cent of the hourly potential, as determined by the Commission?

A. That is correct.

Q. In the contouring methods that you have described?

A. Yes, sir.

Q. Now, I would like for you to make some calculations here in order to find out how much oil was proratable under that order and how it was distributed. Now, take the case of 800,000 barrels a day, for instance, that allowable. You said there was 9,000 wells in the field?

A. Yes, sir; that is right, a little over 9,000.

Q. How much of that oil would be allocated on a per well basis?

A. 360,000 barrels.

Q. How much would there be left to prorate between the wells?

A. 440,000.

Q. Then what percentage of the oil was proratable under that order?

A. A little over half.

Q. A good deal over half, wasn't it?

A. Fifty-five per cent, sir, to be exact.

Q. Now, will you calculate what a west edge well would get under that order?

A. It would get forty barrels.

Q. Well, let me finish my question, please.

A. Yes, sir.

Q. Assuming that the potential of the well was 400 barrels per hour.

A. Under that assumption, it would get sixty barrels.

[fol. 570] Q. Sixty barrels?

A. Yes, sir.

Q. Now, isn't it a fact that there are and were then west edge wells that had potentials that high?

A. Yes, there were a few that did, that is right.

Q. Now, just a little ways east of the extreme west edge there were a number of them, weren't there, a lot of them?

A. Yes, in portions of the field, that is true. Under that particular contouring, the zero line to potential was not taken as the outer limit of the field. A little later they did change that, and at that time there were no 400 barrel hourly wells on the edge.

Q. Let's consider a well in the fairway with 900 barrels an hour assigned potential. How much would that well have received under that order?

A. 175 barrels.

Q. 175 barrels?

A. Yes, sir.

Q. As against sixty barrels for the well on the west side?

A. That is right.

Q. Assuming that the sand thickness on the west side was ten feet, as against 100 feet in the fairway, why, that would give the fairway proportionately more in comparison with reserves than the present order would it not?

A. Yes, sir, a little bit more.

Q. Quite a bit more, wouldn't it be?

A. Well, the best well in the fairway now gets about fifty barrels, as compared to twenty on the edge.

Q. Yes.

A. About two and a half to one.

Q. That is not the average, however, for the fairway, is it?

[fol. 571] A. No, that is the best.

Q. What would be about the average of the fairway?

A. I haven't made that detailed calculation. I think it would run about thirty-five barrels a day.

Q. Now, then, figure it on that basis.

A. It is a little less than two to one on that basis, in the ratio of twenty to thirty-five.

Q. Well, it is less. Yes, about one and a half. Now, then, what would your ratio be in the other case?

A. In the other case it was three to one. However, there were very few, if any, wells that actually got 175 barrels under that first formula.

Q. Take east side wells, an east side well that had 260 barrels hourly potential under that order. What would it get?

A. Thirty-three barrels.

Q. Thirty-three barrels?

A. Yes, sir. Wait, I believe I have an error in that.

Q. That is as against 175 barrels per well in the fairway?

Judge Allred: Didn't you make a mistake on that 900 barrel potential? Fifteen per cent, isn't that 135 instead of 175?

A. That is correct. I added forty to that, but there would be no forty. The forty was not added if the well could make it, see? I did add the forty, which should not have been added to that.

Judge Allred: It would be a little better than twice instead of three times, a little more than twice?

A. Yes, sir, in the ratio of sixty to 135.

Q. The east side well will get how much, you say?

A. 27.3 barrels.

Mr. Hart: If the Court please, I don't see how this [fol. 572] line of inquiry is material, unless they are proposing that a potential order——

Judge Sibley: You said that order was held good, and I guess he is trying to show this is different to spoil the authority you cited.

Mr. Hart: All right.

Q. Now, what does the average well on the east side get under the present order?

A. Well, extreme east side wells get a little over twenty barrels.

Q. A little over twenty barrels?

A. Yes, sir.

Q. What is the proportion there?

A. Well, if you compare that with the best, it is two and half.

Q. Well, I am not comparing it with the west.

A. Of the best, I say.

Q. I say, compare wells on the east side under the order of 1933 and under the present order.

A. Well, the 27 barrels that I gave you was what the well would have gotten on a potential basis. It actually would have been assigned forty barrels.

Q. What would be the comparison then?

A. That with what?

Q. What would be the comparison between a well on the east side under the order of 1933 and the present order?

A. Well, they would have gotten twice as much in total barrels per day allowable in 1933 as what they get now. In the total field allowable, it was twice as much.

Q. A little over three times as much, wasn't it?

A. It is a ratio of twenty to forty.

Q. That is right; pardon me. Now, isn't it a fact that comparatively, under that order the east side people got [fol. 573] materially less than they do under the present order?

A. Yes, they got some less.

Q. Now, isn't it true that under the order of 1933 the fairway people got comparatively materially more than they get under the present order?

A. Yes, sir, they did per well. Now, I haven't calculated it on a per lease basis.

Q. Isn't it true that the people on the west side under the 1933 order got comparatively more than they get under the existing order?

A. Yes, they got a little more. Of course, you are making all these calculations on a per well basis. If you put it on a per lease basis, you might get an entirely different comparison.

Q. Acreage didn't figure then, did it?

A. Not then, but now it does.

Q. We are taking representative wells. You are talking about an average well in the fairway and an average well on the east side and an average well on the west side?

A. Yes, that is true.

Q. Now, you talked about this map, that in this map here you had a green area. What exhibits are these two here?

A. Eleven and twelve.

Q. Defendant's Exhibit 11 and 12—that you had a green shaded area along the east side, and you said that that was the area in which pressures would go down and your wells would be abandoned, is that correct?

A. Yes, sir, generally speaking, that is true.

Q. That is your prophecy of what is going to happen?

A. Yes, sir, that is my prophecy.

[fol. 574] Q. Now, would that happen if the Railroad Commission were to maintain a top allowable that would permit of efficient operation?

A. I think it is going to happen under any way you produce the field.

Q. That is not an answer to my question.

A. I think that there is no way to produce the field as a practical way and prevent that thing from occurring.

Q. Will you answer my question, please? I think it is a fair question.

A. I think I have answered it. If you will state it again in any other way, I will do my best.

Q. An efficient operation, I take it, is one that will maintain the pressures in the East Texas field?

A. But if that cannot be done—I don't think it can be done.

Q. Why can't it be done if you let the water come in as fast as you take the oil out?

A. We have had nine years' history, and that never has occurred in that history.

Q. During that nine years, you have had several periods in which you have had excessively high top allowables, haven't you?

A. Yes, sir, and periods when it was shut in.

Q. If you get that pressure curve that they had here yesterday, that the Commission introduced in evidence, you will see that invariably that when your allowables were high, your pressures went down rapidly, didn't they?

A. Yes.

Q. And when they would reduce their allowable, the pressure either stayed practically on an even keel, or close to that, isn't that correct?

A. No, the general trend in pressure, regardless of how [fol. 575] operated, has been down.

Q. I am not talking of the general trend; I am talking about what happened when the pressures were raised or lowered beyond the critical point.

A. Well, every time that the outlet of the field was increased materially, there was a temporary drop in the pressure, and when the field was lessened in daily production, there was a temporary lull o. that; but if it was left at a

constant rate of flow, the pressure continued to decline and has since it came in.

Q. I am not asking about a constant rate of flow; I am asking you if it is not possible to fix a top allowable that would constantly maintain those pressures?

A. I don't think it is possible, and make a practical order.

Q. Doesn't that pressure chart show that that can be done?

A. The pressure chart that I saw there shows that it has continued to drop.

Q. As a matter of history, it has continued to drop; but it dropped very slowly when they do not raise the allowable critically?

A. Yes, I think so; when the allowable was reduced, there was a temporary halt in the decline.

Q. Or even a raise?

A. Yes, at times there have been rises.

Q. What was the average pressure in the field in 1933?

A. What period?

Q. At the lowest point.

A. The lowest point at that high rate of production of a million barrels per day, why, it got down to about 1,210 pounds per square inch.

Q. That was the average?

[fol. 576] A. That was the average.

Q. What is it now?

A. 1,060 pounds, approximately.

Q. Then that showed what high top allowable would do and inefficient operation would do, didn't it?

A. No, I don't see any relation between those two at all.

Q. Well, the high allowable cut the pressure down, didn't it?

A. Yes, sir. Of course, you produced a lot more oil too.

Q. 150 pounds during the three years show a very slow decline, does it not?

A. Yes, sir.

Q. In seven years, I mean.

A. I think that the field has been operated in a very efficient manner, and I think that the pressure has been maintained remarkably well.

Q. Now, if those pressures be maintained so that the gas will stay in solution, would this picture obtain?

A. No, if it had been possible to do that, that would not be obtained; but I don't think that it is possible to do it under a practical order.

Q. That is not what I asked you. That is for the Commission to say, isn't it?

A. Well, if that had been kept above the pressures that exist, those wells would not have been plugged and abandoned.

Q. You heard Mr. Patton's testimony in which he said that as long as those pressures were maintained high enough, that the gas wouldn't come out of solution, that it was all right?

A. Yes; I agree with that thoroughly.

Q. I beg your pardon?

A. I agree with that thoroughly.

[fol. 577] Q. Don't you think that efficient operation would require that the field be so operated as to seek to accomplish that end?

A. If such efficient operation is such that it is impractical to do it, I don't think it is efficient.

Q. That is not an answer to my question, Mr. Hudnall.

A. I will answer your question this way, that I think that if it were possible to do that and operate the field, that it ought to be done, but I don't think it is possible to be done.

Q. The Commission did that during the nine years of the field?

A. No, you have had wells plugged and abandoned.

Q. They are only on the extreme east edge of the field, aren't they?

A. Some of them are a mile inside.

Q. It is down here in this area where the gas has already come out of solution, isn't it?

A. Yes, sir, that is it primarily.

Q. Doesn't that prove the point, that in order to maintain efficient operation, you want to maintain your gas in solution by maintaining your pressure?

A. Undoubtedly, that is a desirable thing to do, but if it becomes impossible, you can't do it.

Q. I am not asking you if it becomes impossible. That is another question. Don't you think that ought to be an objective of the Commission?

A. Yes.

Q. So far as is possible, to maintain the pressure so the gas will not come out of solution?

A. That is correct, as long as they can do that and keep a practical order. I don't think the field should be shut in to get the pressure.

[fol. 578] Q. It won't be necessary to shut the field in to do that, will it?

A. You will have to shut these wells in to do it.

Q. During the last fifteen day shutdown period, how much pressure was built up?

A. I don't remember the exact figures.

Q. Can you guess at about what it was?

A. I think on a whole it built up some twenty pounds, but I would have to have the exact figure.

Q. Wasn't it more nearly thirty pounds?

A. It may have been. I don't remember the exact figures, but you can't produce a field when it is shut down.

Q. Now, Mr. Hudnall, you testified with reference to the ultimate recoveries of the Humble under what you said was the existing order?

A. Yes, sir.

Q. I want to know first what your assumptions were there, and I will ask you a few detailed questions on that point. What was your assumption as to what the field top allowable would be from time to time?

A. I assumed that it would remain about like it is as long as it would make it, and when it got to the point it wouldn't make it, it would be distributed in such a way as to give the properties that could make it that amount.

Q. Well, now, that is rather a little indefinite. Will you tell what you mean by as long as they can make it?

A. I say that the field as a whole wouldn't possibly make 690,000 barrels of oil a day throughout the life of that field.

Q. Very well, at what rate of flow did you stop—rate of [fol. 579] flow for the individual well would you stop that top allowable at, and then begin to cut it down?

A. Well, I assumed that the same conditions would prevail that prevail now as long as the field could make that, and when it couldn't, you would just have to reduce it from that top.

Q. If the field is gradually going to water, and as the water moves in from the west the field will get smaller and smaller?

A. That is true.

Q. In a few years it will be half as big as it is now, and in a few years more a quarter as big, and you don't expect the field allowable to continue at that high rate under those conditions, do you?

A. No, sir, I don't think at all that it could do that.

Q. Well, just how long did you figure that the top allowable would remain at 691,000 barrels per day?

A. I didn't give it any period of time. I assumed it would stay like it is now as long as it could make it.

Q. Unless you tell us how long you assumed it could make it, I don't know how in the world the Court is going to believe that there is any value to your calculations.

A. Well, I think that I can explain it so that the effect of it will be understood.

Q. Well, I want you to answer my question.

Mr. Hart: We object to that. Let him make his explanation.

Mr. Baker: He hasn't answered my question yet.

Judge Sibley: The answer to the question comes first, and then the explanation, usually.

Mr. Hart: All right.

[fol. 580] A. Will you ask the question again? I didn't get it.

Q. Just how long should the field maintain this top allowable of 691,000 barrels?

Judge Sibley: In your opinion.

Q. In your opinion.

A. I don't know how long the field will make that. I believe that it would do it from ten to fifteen years. I don't know exactly. You just can't tell.

Q. What size would the field be?

A. What size would the field be?

Q. Yes.

A. I can't tell what size it would be.

Q. You don't know what the reserves would be then?

A. No, I don't know exactly what the reserves would be. I haven't calculated them.

Q. You don't know what the reserves would be in each of Humble's leases?

A. No, sir.

Q. And you don't know what comparative reserves the Humble has, in comparison with the field; you wouldn't know what that would be at that time, would you?

A. No, sir, but I think without any question that the Humble properties will produce longer than the average properties in the field, and if they do get currently some twenty per cent less or twenty-five per cent less and do produce for twenty-five per cent longer, they will produce as much oil as they have under them.

Q. Is that because of the fact that they have thick sands and more oil under them?

A. Certainly, and they are located well in the field. They just have a good structural position.

[fol. 581] Q. Ought not they to produce longer to produce their oil?

A. They should and will.

Q. They will have to produce a good deal longer?

A. Yes, sir, about twenty-five per cent longer.

Q. You admit, then, if they maintained a top allowable of 691,000 barrels during the balance of the life of the field, Humble would have to wait four or five years after the field was exhausted to get its oil?

A. If you want to make that assumption. That is not a possible assumption to make.

Q. Now, then, what would the well allowables be? Would the well allowables be just the same as they are now, under your assumption?

A. No, sir, the per well allowable will, of course, go up as the wells are plugged and abandoned on the west edge of the field.

Q. That is not the way the Commission is operating the order at this time, is it?

A. I understand that when a well is plugged and abandoned, its allowable is taken off the schedule, yes, sir.

Q. In other words, the point I am making is this, that they are not maintaining a top 690,000 barrel allowable at this time, are they?

A. Well, no, not day by day.

Q. As new wells come in, they add to that 690,000 top allowable, don't they?

A. Yes, sir, I think that is true.

Q. That accounts for the fact that it is over 691,000 barrels now?

A. Yes. If the rate of drilling is greater than the rate of abandonments, that is what would occur.

[fol. 582] Q. Now, we will suppose, just suppose a situation in which 5,000 more wells were drilled and you add

twenty barrels per day to each of those wells, would there be as much proratable oil as you now have?

A. No, not under that top.

Q. Then Humble would have to suffer more loss, share a part of that proratable oil with the new wells, wouldn't it?

A. I think the Humble ought to drill more wells and increase the recovery from their property and participate more from those.

Q. That is the remedy you suggest, to drill more wells?

A. If you are going to prevent waste, that is the remedy.

Q. If you are going to prevent waste?

A. Yes, sir.

Q. I would like for you to tell just exactly how many more barrels of oil on each of Humble's leases it could produce that it can't already produce by drilling more wells?

A. That would require detailed calculation on every lease.

Q. And I would like to know just exactly where you would locate each of those wells to get oil that wouldn't otherwise be produced if it were allowed to open its valves a little more and produce 14.3 per cent of the allowable under the present order?

A. I can tell you where I would locate them. I would locate them out in the wide spaced areas between the wells. There is no question about that.

Q. That is because you just want to see more wells there, I suppose?

A. No, sir, because the experience I have had from scientific investigation and from observation on that field leads [fol. 583] me to the conclusion, without any question, that the more wells you drill, the more oil you will get out.

Q. Now, just how much more?

A. Well——

Q. Just take any one of Humble's leases. Take this section here, any one of Humble's leases, and we will drill one more well. I want you to tell the Court just how much more oil the Humble would produce of its recoverable oil than it could produce under the wells it now has, if its allowable were adjusted in such a manner as to enable it currently to get its fair share of the oil?

A. I can make such calculations. It will take some time to do it.

Q. Do you know where there is any particular trap there that could not be drained by the present wells?

A. No, but I know that there are individual traps all over that end of the field.

Q. But you don't know where they are?

A. I think I can show you an illustration here that will convince anybody they are there.

Q. I want to know what is under the Humble leases; that is what I am talking about. I am not talking about anybody else's lease. I want to get down to cases on this.

A. I haven't made a detailed study on the Humble leases.

Q. You don't know how many wells ought to be drilled, or where they ought to be drilled on the Humble leases? It is just a matter of conjecture, isn't it?

A. It is based on my knowledge of the field, and I know those conditions exist.

Q. Somewhere?

A. That is right.

[fol. 584] Q. Now, what kind of a rise of the water table have you assumed to back up your statement?

A. I haven't made any assumption on it.

Q. You haven't made any assumption on it?

A. No, sir.

Q. Now, would the answer be the same if the water table were rising on the level as if it were bulging up under the fairway where most of the Humble's properties are?

A. I think that that may affect it, but I think that without any question, that those leases are going to produce longer than the rest of the field any way you produce it.

Q. It won't do it if you hold the pressure down to the point where gas wouldn't come out of solution, would it?

A. Yes, sir, I think that those leases just by virtue of the fact that they have thicker sands and are located in the fairway, that they are going to produce longer than the rest of the field.

Q. Well, you take a lease here in the middle of the fairway at the point where the sands are thickest, and then take one on the east edge, say a thousand feet from the east edge, take the contours, and how much higher on the average would the wells on the east be on the structure than those in the middle of the fairway?

A. Generally speaking, they would be about forty feet.

Q. About forty feet?

A. Maybe eighty.

Q. Water presses oil uphill, doesn't it, because the oil is light?

A. That is correct.

Q. Now, won't you naturally expect water pressures under efficient operating conditions to keep on operating here [fol. 585] and keep on pressing oil uphill?

A. Mr. Baker, when you have a history of a field that shows you have over 160 wells plugged and abandoned over on the east side, to assume that you would have no more plugged and abandoned wells is ridiculous.

Q. I am not asking about that. Certainly, there will be, but those plugged and abandoned wells have been, so far, in there in the tight sand areas, haven't they?

A. Yes, but they extend all up and down that east side of the field.

Q. And your tight sand area extends all up and down that east end of the field?

A. That is correct.

Q. You have shale fingering in, and you have sands fingering east, and you have a very erratic condition over there on the east side, haven't you?

A. You have erratic conditions all over the field. They are a little more accentuated on the east side.

Q. You have places over there where there is very little oil sand?

A. Yes, sir.

Q. You would naturally expect them to play out pretty soon, because pressures can't be maintained?

A. That is the same reason lots will be plugged and abandoned before the water reaches them.

Q. Under efficient operation couldn't pressure be maintained to a point where gas would not go out of solution?

A. They have not been able to do that in the last nine years' history of the field, and I don't think they will in the future.

Q. Assuming efficient operation to a point where gas will [fol. 586] not come out of solution, they could, couldn't they?

A. If you could make that assumption, I think so; but I don't think you can make that assumption.

Q. Now, I want to know how much detailed calculations you have made as to the reserves under each of Humble's leases.

A. I took each lease individually and made a detailed calculation of the acre-feet of sand under every lease the Humble had.

Q. Well, you did that in making your isopach map?
A. No, sir, I did that before I made the isopach map.
Q. Now, then, have you calculated what each of Humble's leases will produce, assuming that the present order continues in effect?
A. No, sir, I have not made that calculation.
Q. All right. Now, have you figured just how long each of Humble's leases would produce if this order were to remain in effect?
A. No, sir, I have not made that calculation.
Q. It is possible to make such calculations, isn't it?
A. Yes, sir.

The Court then, at 10:30 o'clock A. M. Friday, February 16, 1940, took a five-minute recess, at the conclusion of which the following proceedings were had:

Mr. Moody: Shall we proceed, Your Honor?
Judge Sibley: Yes, sir.

Questions by Mr. Moody:

Q. Mr. Hudnall, this map over on the left, what exhibit is that, do you recall?
A. 14, I believe.
Q. 14.

[fol. 587] Mr. Hardwicke: 14; that is correct.
Q. And the red shows the area on the west that has been found to be productive of oil since 1934, is that the idea?
A. That is correct.
Q. And the area on the east colored in green shows the portion of the field that has been found to be productive of oil since 1934?
A. That is correct.
Q. Did I understand you to say that since 1934 the field has been expanded about 30 per cent?
A. Around 25 or 30 thousand acres.
Q. Around 25 or 30 thousand acres?
A. That is correct; around that.
Q. Well, let's take the minimum, 25,000 acres, that would be 20 per cent, wouldn't it, one-fourth——
A. That is correct.
Q. —of the field. Well, Mr. Hudnall, aren't you a little wrong in that? Doesn't your map—can't you look at your

map and tell that there isn't 25 per cent or 30 per cent of the area of that field colored red and—on the west, and green on the east?

A. No, I think that is approximately right. Here is what it was based upon, an accurate count of the number of wells in that area, and the actual count of the number of wells was 3500 and 50 some wells.

Q. All right. Now, you are going by wells, and not by area?

A. Yes; and then I took the number of wells, and I know approximately what the density is—I don't know exactly, but it is about a well to 8 acres; that is the way it was arrived at. I will be glad to make the detailed calculation, if you want it.

[fol. 588] Q. Well, your map is accurate, is it, as to the area you have colored?

A. Yes, sir, it is.

Q. And you think—you testified that on that map, Defendants' Exhibit 14, about 20 per cent or 25 per cent to 30 per cent of the area is colored in red and green?

Judge Sibley: I think you all have figured wrong on that. Wasn't it 110,000 acres before this 25,000 was added?

Mr. Moody: Well, this is——

Judge Sibley: Percentage would not be quite what you say.

Mr. Moody: Yes, sir.

Q. How many acres did you say were added?

A. 25 to 30 acres, that is what I arrived at.

Q. Well, that would be about 100,000 acres, since there is now 131,000 acres in the field?

A. I think I can explain some of that discrepancy in there. The 131,000 acres is the present producing area; there has been about three to four thousand acres plunged and abandoned, and I estimated that at one time the field to have between 135 and 138,000 acres in it.

Q. All right. At any rate, you estimate the area colored there in green and red—that is, you have colored the right area in green and red?

A. That is correct. I will tell you exactly how that was done. I had the map made in January, 1934, and took that map and superimposed it on the present map, and that is what I got.

Q. Anyhow, you colored the right areas in green and red, and you say that is about 20 or 25 per cent of what was the field before?

[fol. 589] A. That is correct.

Q. Now, in the area where the field has been extended to the west, that area is all underlaid with water, isn't it?

A. Correct.

Q. And it is in that area that many of the abandonments that you speak of has taken place?

A. Yes, sir, there have been some 200 wells abandoned in this red and green area.

Q. All right. And the sands that the wells were drilled into in the area, so far as oil was concerned, or oil sand was concerned, it was a very thin sand, wasn't it?

A. Yes, sir, very thin.

Q. All right. Now, then, over on the east side where you have it colored in green, you don't come there to a straight line where this Woodbine sand plays out, and shale or some other formation starts in; it is an irregular line, isn't it?

A. Yes, sir, it is very irregular.

Q. In places the Woodbine sand fingers out into the non-oil bearing materials or formations, and in places the non-bearing formations—oil bearing formations fingers out into the Woodbine sand, isn't that right?

A. Yes, sir, that is correct.

Q. So that like I put my fingers together here (illustrating) is that right?

A. Somewhat; not as the regular cogs of a wheel fit into another wheel, but somewhat that way.

Q. Yes, sir, somewhat that way. I think I could describe it a little more accurately this way, that after the Woodbine sand was deposed and prior to the time that the Austin chalk was laid down above it, which forms the cap of the [fol. 590] pool now, that there was a period of erosion in which the Woodbine sand was eroded away practically, and it was this irregular eroded surface that the Austin was laid down on, and that gives you those fingered conditions; in some places there are river channels extending out into it.

Q. All right. Those extensions on the east have been finding those fingerings where the Woodbine sand plays out to what is the really good oil bearing section of the Woodbine sand?

A. Yes, sir.

Q. Now, in those areas the quantities of sands found are relatively small, are they not?

A. Yes, sir.

Q. And the quantity of oil in place there is relatively small, as compared with the other parts of the field?

A. Yes, sir.

Q. And a good many of the abandonments that you speak of on the west side—the east side, rather, have taken place in that particular area we have just been talking about?

A. Yes, sir, a very large per cent of them.

Q. Now, do I understand from you that a gas cap has formed down at the south and on the east side?

A. There is a very small area that is affected by free gas.

Q. All right. That gas cap is gas that is out of the oil and up above the oil, isn't that right?

A. It is not exactly that way. The gas cap is—it is true that there is some free gas, but the oil is also there. The effect of it is that you get a high gas-oil ratio when you produce the wells that normally you get, say, 350 to 400 cubic feet of gas and over there, you get twice that much.

Q. Well, so that those of us who are not possessed with the same technical skill and knowledge that you are can [fol. 591] understand it, let me ask you if it is correct to say this, that in that neighborhood of the field that you speak of out there where the wells have a high oil and gas ratio, whether the gas is in the sands up above the oil or in the sands down below the oil, the gas is out of the oil, isn't that right, not in solution in the oil any longer?

A. A part of it. Of course, there is some pressure there, and as long as there is some pressure there, why, some of the gas stays in solution in the oil.

Q. Well, the gas is there out of solution, and also in solution?

A. That is correct.

Q. Originally that was not the case?

A. No, originally that was not the case.

Q. When that field was first brought in, why, there was no gas cap or free gas in that part of the field where the free gas or gas cap is now, was there?

A. That is true; there was no free gas there.

Q. That has been the result of production, hasn't it?

A. Yes, sir.

Q. And if the production on the east side had been less than it has been, the tendency would have been to hold up

the bottom hole pressure and reduce the amount of free gas, isn't that right?

A. That is correct.

Q. Yes, sir. Now, Mr. Hudnall, really, this field gets its pressure from the water, does it not, underneath?

A. That is one of the chief sources; there are other sources, but undoubtedly the water is the chief source of energy—one of the chief sources.

Q. Well, the expansion of gas would be one source of energy, would it not?

[fol. 592] A. Yes, sir, that is a source of energy; I think that is an important source right at the time you are producing the well. It is not so important from the viewpoint of restoration of pressure.

Q. But the principal pressure in the field is the water pressure, is it not?

A. I think that is essentially correct. I do not follow the water drive to a 100 per cent, by any means.

Q. Well, there may be some other things in it, but that is the principal one, isn't it?

A. It is a very substantial source of renewed pressure, undoubtedly.

Q. All right. That water—there is a—the Woodbine sand over there at the East Texas oil field is at a depth of about 3600 feet below the surface of the earth, isn't it?

A. That is correct.

Q. And then it spreads out to the west and comes to the surface out there between Fort Worth and Dallas somewhere, a hundred and—how far, 175 miles to the west?

A. About 125 to 150 miles to the west.

Q. About 125 to 150 miles to the west, and it is somewhat in the shape of—the Woodbine sand is somewhat shaped like a "U", is it not, or, rather, we will say, a "J"?

A. More like the bottom of a canoe, with the East Texas field sitting up on one rim of it and the other rim of the canoe out from it.

Q. But the outcrop is higher than the place where you say the East Texas oil field is, is it not?

A. Oh, yes, the outcrop is approximately 36 feet higher than it is in the field.

[fol. 593] Q. All right. Now, it is rather—if I had a "U tube", that one side of it was six inches high, and the other side of it was two inches high, it would not be—the propor-

tions would not be the same, but the principle would be there, would it not?

A. That is correct.

Q. And it is the water over here in the high column coming down against the oil over in the low side of the U tube that causes the pressure, is it not, or the principal part of the pressure?

A. That was the principal source of the pressure. It is generally conceded by everybody that has studied the problem now that the real cause of water infiltration into the field is due to the expansion of water, and not to the U tube effect. Now, that is very clearly demonstrated; in other words, from a calculation of the total volume of water that is in the Woodbine reservoir.

Q. All right. Then whether it is whether the water expands or because of the weight of the water being higher than the oil, anyhow, water furnishes the principal source of pressure?

A. Yes, sir; it is one of the principal sources of pressure.

Q. All right. Now, as long as you take oil out of that reservoir faster than the water can build the pressures back, you will have the pressures going down, won't you?

A. That is true; that is inevitable.

Q. Now, on the east side is where you have the low pressures, isn't it?

A. Yes, sir.

Q. And the fact that you have the pressures now so low that the gas is passing out of the oil on the east side demon- [fol. 594] strates, does it not, that the oil has been taken out on the east side faster than the water and the other forces can contribute to the pressure there again and build the pressure up and keep it above that point at which the gas passes out of the oil?

A. That is very conclusive; that is correct.

Q. There is no question about that in your mind?

A. None whatever.

Q. All right. Now, then, the pressures on the east side are going down, are they not, at the present time?

A. Yes, sir, they are.

Q. From month to month as they have made their tests, the pressures have been going down?

A. Yes, sir, it is going down primarily with the rest of the field.

Q. All right. Now, then, if the 20 barrel minimum were eliminated from this present formula or proration, and the field were prorated on the fraction without the 20 barrel minimum, that would mean less oil to be taken out currently out of the east side, would it not?

A. Yes, I think it would.

Q. Well, you know it would, don't you?

A. Well, you don't know until you try it out.

Q. All right. You told the Court a while ago that the average well over on the east side produced about a little over 21 barrels per well, didn't you?

A. Here is what I mean to say, that there was about a thousand of those east side wells that just barely do make the 20, so if you gave them any more, you wouldn't affect their actual production.

Q. Well, if instead of letting them produce a flat 20 bar- [fol. 595] rels, say you cut them down to five barrels, then there would be considerable less oil taken out of the east side, wouldn't there?

A. That is correct.

Q. And the pressures would stand up longer?

A. Yes, sir.

Q. And the more you take out of the east side, the more you contribute to the dissipation of the energies that make possible the profitable production of oil in that field, isn't that true?

A. Yes, sir.

Q. All right. Now, Mr. Hudnall, what do you estimate to be the total amount of recoverable oil in the East Texas field at the present time?

A. I estimate it to be around four billion barrels.

Q. Four billion barrels?

A. That is correct.

Q. And you mean by that, that that is the amount of oil that they will get out of it?

A. Ultimately, yes; not future, but ultimately.

Q. That includes——

A. Past production.

Q. —past production of four million barrels?

A. Yes, sir.

Q. Well, what do you estimate to be the present amount of recoverable oil in the field?

A. It would be four billion barrels less about one million, three hundred fifty thousand.

Q. That would be 2,650,000,000 in round figures?

A. That is correct.

[fol. 596] Q. That is what you estimate is left over there now of recoverable oil?

A. That is correct.

Q. Now, Mr. Hudnall, with respect to the present order and its application to the East Texas field, you have got several figures on it, have you not, that undertake to allow properties to produce in relation—on the basis of their reserves and the capacity of the wells to produce?

A. Yes, sir.

Q. For that part of the formula that has the acreage times sand thickness times potential times bottom hole pressure is the numerator, and the sum of production of all of these for all wells in the field is the denominator, multiplied by the 176,000—that is the—that part of it you—is designed to give properties an opportunity to produce in relation to what they have and their capacity to produce oil.

A. That has relation to that, yes.

Q. Yes, and that is applied to about one fourth of the daily allowable for the field?

A. Yes, sir.

Q. And the other part of it—the three fourths is distributed on the flat per well basis?

A. That is correct.

Q. And that three-fourths is distributed without any relation whatever to capacity of properties to produce or the reserves that they have under it; it is just a flat 20 barrels?

A. That is correct.

Q. All right. Now, Mr. Hudnall, I believe you said a while ago in answer to either Mr. Hart's questions or maybe Judge Sibley's—no, Mr. Hart's question, that you thought [fol. 597] that the field would produce at this 690 barrels, 690,000 barrels per day for fifteen years?

A. No, about ten—ten or twelve years.

Q. Ten or twelve years?

A. That is right.

Q. All right, sir.

A. And that is at the rate that it is being produced at, about 400,000 barrels per day. That doesn't mean it will produce 690,000 barrels per day.

Q. All right. Did you ever figure that out, 690 times two—you said five days a week?

A. Well, I figured it on 400,000 a day.

Q. All right. Did you ever figure that out, 400,000 times 365 times twelve years, and set that off against your two billion 650 million barrels of oil?

A. No, I didn't do it that way. I figured it this way, that at the rate, it would take about 17 years to produce all of the oil, and I knew it wouldn't do that for the full life of the field; so I just arrived at the ten to twelve years, and did it on that basis.

Q. Well, if you would take 400,000 times 365 times twelve, you will get something above that 2,600,000,000 barrels of recoverable oil, wouldn't you?

A. No, I don't think it would do that.

Q. Have you got a slide rule there?

A. No, I have got a pencil to figure it out.

Q. Well, let's not take up time now to do that figuring.

A. I made a detailed calculation and figured it would take about seventeen years to do it.

Q. Well, I won't ask you to take time here to do that now. [fol. 598] Mr. Hudnall, do you say that you think it will be ten years before the oil gets to the Rowan & Nichols lease —the water, I mean, before the water gets to the Rowan & Nichols lease?

A. Yes, to get to it, even.

Q. All right. Now, you say you think it will take longer than that to drown it out?

A. Yes, I certainly do.

Q. Now, you said that was at the present rate of rise?

A. That is correct.

Q. That was your statement?

A. That is correct.

Q. All right. Now, then, Mr. Hudnall, it is a fact, is it not, that over on the east of that oil field where the sand is going up and on the rise, if you take a section of that field lengthwise—I mean a cross section of it lengthwise—perhaps I am not—I had better not—I was trying to talk in cubes and planes at the same time, but I had better not undertake to do that, since you are an engineer. But at any rate, the sands are thinner as you get farther to the east?

A. Yes, sir.

Q. They get thinner——

A. Yes, sir.

Q. —as you go up the structure after you leave the fairway?

A. Yes, sir.

Q. Now, then, when the water gets up in that section, it is apt to rise a good deal faster than it has been rising at the present rate of rise in that field, isn't that right?

A. Yes, sir, the rate of rise vertically will increase as the [fol. 599] cross section area through which the water moves decreases.

Q. All right. Then when you say that it will come to the Rowan & Nichols tract in some ten or twelve years——

A. Yes, sir.

Q. Well, there will be a great many years after that before the Rowan & Nichols tract will be drowned out——

A. Yes, sir, surely will.

Q. —at the present rate of rise?

A. Yes, sir.

Q. You are figuring the rate of rise in the field now where it is a tremendously wide area to rise over, and where it has not reached that part where it is going to be in that bottleneck where the rise will be more rapid?

A. That is correct.

Q. Now, you state that that Rowan & Nichols tract was at minus 380?

A. No, 3180.

Q. 3180, I mean.

A. That is on top of sand, yes, sir.

Q. That is on top of the sand?

A. Yes, sir.

Q. Now, then, to the east of that 3180, the sand gets how high?

A. About 40 feet high; it gets to about 3140.

Q. About 40 feet higher?

A. That is correct.

Q. Now, then, the sand, it is about 90 feet thick under the Rowan & Nichols tract?

A. Yes; sir, that is the saturated sand. Of course, the interval from the top of the sand down to the water level is 140 feet; the water would have to rise 140 feet to flood the Rowan & Nichols lease.

[fol. 600] Q. And it has a 90 foot sand there anyhow, net oil sand, is that what you mean by that?

A. Yes.

Q. And it is minus?

A. 3180 to the top of the sand.

Q. To the top of the sand. Now, over to the east it is minus what?

A. 3140.

Q. All right. Now, is that the highest?

A. That is about the highest, yes, sir.

Q. How thick is that sand over there?

A. It pinches out completely.

Q. It gets down to ten feet, doesn't it?

A. Yes, sir.

Q. All right. But you have—in that 3140 contour, you have sands that are as thick as 30 feet, do you not?

A. Yes, you do, definitely.

Q. All right. There is sand to the east of this Rowan & Nichols tract, is there not, the bottom of which is higher than the top of the Rowan & Nichols sand, according to your own maps over there?

A. Yes, sir, undoubtedly.

Q. All right. So, now, then, if this oil moves up structure, it moves from the Rowan & Nichols tract up into the high sand at the east, the top of which is 40 feet high, and the bottom of which is some feet higher than the top of the sand on the Rowan & Nichols lease?

A. That is correct, if the water ever does flood that far east.

Q. All right. If it ever gets over there, why, that is what will happen?

[fol. 601] A. I think there is a possibility that it will get to the Rowan & Nichols lease; I don't think it will ever get to the east side at all.

Q. They won't get all that oil out, then?

A. No, I don't think they will get all that oil out on the east side, on that part of the field.

Q. You think it will get to the Rowan & Nichols lease?

A. I think the Rowan & Nichols lease is in that part of the field that is going to be approximately the place where the decline of pressure from the east causing abandonments is going to meet the area of plugging and abandonments from water coming from the west.

Q. Now, that decline in the east depends altogether on how much the Railroad Commission allows them to take out on the east, doesn't it?

A. I say that is a big factor.

Q. Now, you said, did you not, though, that it is your opinion that the Rowan & Nichols lease will some day be flooded out?

A. I think that that is possible under the rates at which the field has been produced in the past.

Q. All right. Now, then, you recognize, do you not, that the engineering profession generally takes the view that this water will rise over there and flood out, and finally get clear over to the east edge, as they take out all of the oil?

A. Well, quite a number of them do, and a number of them do not, Governor Moody. I believe I can express that better this way, that I have appraised over $100,000,000 of property in the East Texas field, estimating the reserves, placing values on them, and that I know that the public are [fol. 602] spending their money in the center of that field, and paying more for it there than on the east edge now; they are doing that.

Q. Now, since you mentioned that, Mr. Hudnall, your appraising property, when you appraise a property, do you take into account how thick the sand is?

A. Yes, sir, that is one feature of it.

Q. Yes, sir. You take into account the bottom hole pressure under that tract, do you not?

A. Yes, sir.

Q. Do you take into account what the potentials of the wells are on the tract?

A. Yes, sir.

Q. And from the combination of those figures and your deductions that you make for connate water, and various things, taking into account the porosity and permeability of the sand, and undertake to calculate for a man that you are valuing that property for, how much oil there is under the property, don't you?

A. Yes, sir, frequently do.

Q. And you can reach a value, can you not, on that sort of a calculation upon which people will buy and sell their oil properties?

A. Yes, sir.

Q. And upon which investment houses and banks and other investment houses will loan money on oil property?

A. Yes, sir, that is correct.

Q. And you also make those valuations for purposes of taxation and for use in lawsuits involving questions about

how much the valuation or assessment ought to be for tax purposes?

A. Yes, sir, that is true.

[fol. 603] Q. And so those calculations about quantities of oil that a person has under his land can be made with sufficient accuracy to meet all the requirements of the business world in the matter of buying and selling leases, in the matter of lending money on leases, in the matter of taxation, and things of that kind, isn't that correct?

A. Yes, sir, that is true.

Q. Yes; in other words, it can be done for all business purposes, except the Railroad Commission somehow or other can't do it to give a man an opportunity to produce in proportion to what he has under his land.

A. I think the Railroad Commission made a pretty good effort when they put this formula into effect.

Q. Well, it happens to be your idea that you are here defending it, doesn't it?

A. Well, I recommended this formula, yes.

Q. Yes. You are the man that generated the formula, aren't you?

A. Well, I didn't generate it; I figured it out and recommended it.

Q. All right. You figured it out and recommended it. You have, through the life of this field, have you not, been committed to the proposition that they ought to drill this field down to a density of about one well to two acres?

A. About two acres in the middle of the field, and about five on the edge.

Q. All right; and you have been committed to the proposition that the more wells you drill, the more oil you will get?

A. Yes, sir, very definitely.

Q. And in a multitude of cases where the contest was over permits to drill wells on tracts down to one-fourth of an [fol. 604] acre, you have testified, contending for the drilling of the well because it will lead to a recovery of more oil, haven't you?

A. I have testified in every case I have been in that the more wells you drill, the more oil you will get out.

Q. That is not my question. You have been in the court house testifying about the permits that ought to be granted on tracts of a fourth of an acre, haven't you?

A. I don't recall any tracts that small.

Q. Didn't you testify in the Greer case?

Judge Sibley: Well, I don't think that is a matter that is material here.

Mr. Moody: Well, I will pass that, Your Honor.

Q. You have also been one of those who has contended for a flat 20 barrel per well—for a flat 20 barrel per well allowable, have you not?

A. No, sir, I don't think I have ever contended that. I have recommended the order that the Railroad Commission put in in 1933.

Q. Now, then, you have also been one of those who has contended for the flat 20 barrel per—for a flat 20 barrel per well allowable, have you not?

A. No, sir, I don't think I have ever contended that at all. I recommended the order the Railroad Commission put in in May, 1933.

Q. Originally you undertook to defend, did you not, the order that allowed every well in the field a 20 barrel minimum, or the 2.32 per cent of the hourly potential, which allowed every well in the field a 20 barrel flat minimum?

A. No, sir, I made no attempt to defend the order. Judge McMillan can tell you what I testified in that case.

[fol. 605] Q. You testified in that case, didn't you?

A. Yes, sir.

Q. Did you express in that case the opinion that that would allow the properties in the field to recover reasonably in proportion to what they had?

A. No, I don't think you will ever find that I said that.

Q. You don't think you undertook to defend that order, then?

A. No, sir.

Q. You recognize, do you not, Mr. Hudnall, that with that formula and a 20 barrel minimum per well, that the wells over on the west side and the wells over on the east side are allowed to produce more in proportion to the oil in place under the tracts than wells in the center of the field where they have the thick sand?

A. Yes, sir, that is true.

Q. And now, Mr. Hudnall, as long as you undertake to prorate that field, or by "prorate" I mean allocate your field allowable among wells in the field on the basis of three-fourths of the allowable being distributed on a well basis,

and one-fourth being distributed on the factors that undertook to take into account the reserves of the properties and the productivity of wells on the properties, the result will be that the poorer properties will get more than the properties that have the deeper sand, drilling density being the same?

A. That is true as to the east side of the field. It is not necessarily true as to the west.

Q. Well, now, on the three-fourths—one-fourth basis, won't—assuming a tract of five acres, with one well to five acres on the west, and one well to five acres in the center, and one well to five acres on the east, you fix your field [fol. 606] allowable and distribute that field allowable among wells on the basis of one-fourth—on the factors we have been over here, and 20 barrels on three-fourths of the daily allowable on the flat per well basis, which tracts—the tract with less reserves and less recoverable oil under it will inevitably get more in proportion than the five acres that has the thicker sand and the greater amount of recoverable oil, as long as the factors are applied?

A. That is true on the east side, but not on the west side.

Q. It is true on the east side, if a man has got a five-acre tract with 10 feet of sand under it, and he has got a bottom hole pressure, let's say, of 800, and over on the west side a man has got a five-acre tract with 10 feet of sand under it, and has got a bottom hole pressure of a thousand or 1100, and in the middle there is a man that has got a sand thickness—five acres, a sand thickness of 90 feet, and has got a bottom hole pressure of about 1100, and the potential on the west is down lower than the potential on the center tract, and the potential on the east is lower than the potential on the center tract, and you are going to prorate it one-fourth on the factors and three-fourths on the flat per well allowable; and you say the man on the west won't get more in proportion to what he has than the man in the center?

A. He will, of course, get currently more, but not ultimately.

Q. You say ultimately you don't think he will?

A. No, sir, I don't think he will.

Q. Can you tell me when the man in the center will begin to produce ratably along with the fellow over on the east?

A. When the fellow over on the east is plugged and abandoned, and the fellow on the west is plugged and abandoned.

[fol. 607] Q. If the center lease lasts longer than the fellow's lease does on the east, and the fellow on the west, he will catch up?

A. Yes, sir.

Q. Do you know—can you tell me whether that is going to inure to his benefit or the benefit of his grandchildren?

A. That will all depend upon the circumstances.

Q. You don't know how many years it will be, do you?

A. No, sir.

Q. Let's take this map here. Here is the center of the field, is it not?

A. Yes, sir.

Q. That is where the thick sand is right through there?

A. Yes, sir, that is true.

Q. Over on this side is where you have got this higher area, higher structure over here?

A. Yes, sir.

Q. You say you don't think the water will ever get over into that red over here?

A. No, sir, it won't throughout the entire field. There will be places where it will.

Q. It is going to get into this part here?

A. Yes, sir.

Q. And that is the fairway?

A. That is correct.

Q. After this man is in the water, and this man on the east is still producing on that one-fourth—three-fourths method of prorating, the situation you just spoke about won't come about, because he will be drowned out, and he will be producing oil, and water won't get over there?

[fol. 608] A. No, the pressure may have declined to where the fellow on the east is gone long before water gets there.

Q. They won't be producing in that higher section in there?

A. That is correct.

Q. Mr. Hudnall, is it not true that any method—rather, this question. Isn't it a fact that in the present application of this formula in the field, that the Railroad Commission

is calculating sand thickness on the west side, that the original sand thickness, notwithstanding the fact in places the water has risen as high as 25 or 30 feet, and there has been an average rise under the west part of the field of about 8 or 10 or 15 feet, somewhere along there?

A. That is correct.

Q. What is the average rise? Do you know?

A. I don't know exactly. I have made some calculations on it. My calculations indicate about 8 to 10 feet.

Q. That is the average?

A. Yes, sir.

Q. There are places where it has risen as high as 30 feet?

A. Yes, sir, definitely.

Q. If you apply that formula, the man who got—where the water has risen 30 feet, his allowable is calculated as though the 30 feet where the oil has been taken out and replaced with water, as though that were still all oil; isn't that right?

A. That is correct.

Q. And the order is being so applied over all of that part of the field where it is under water, as shown by one of these maps we had here colored in red?

A. Yes, sir, that is true.

[fol. 609] Judge Sibley: What about potentials? Do they use old potentials, or the present?

A. They use the old potentials.

Judge Sibley: Do you attempt to justify that?

A. Yes, I think there is some justification of using higher potentials on the west there.

Judge McMillan: If you are going to use the sand thickness as one of the parts of your formula, why do you use the old sand thickness?

A. That is the present purpose of giving the wells that have 10 feet of sand the benefit——

Judge McMillan: That is sort of a handicap?

A. No, sir, that is for their benefit.

Judge McMillan: You are handicapping the other fellow?

A. Yes, sir.

Judge McMillan: Trying to do something God Almighty didn't do to put them on better structure?

A. The real purpose of allowing them ten feet was to allow them all something. If you just took that formula and applied it straight without any minimum allowable,

some wells would get less than two barrels and couldn't be operated, and the purpose for interpreting the sand as 10 feet clear to the edge was to in some way give them something to operate on.

Judge Sibley: Do you know what the 20 barrel minimum or 11.7 barrels, whichever way you look at it, what that is for, aside from the legislative marginal wells, what that is for?

A. My judgment is it is for this purpose, that if those wells on the west side begin to make a lot of water, they cannot be profitably operated below 10 barrels. They could [fol. 610] go down to 10, but under the way it is being allowed, they are getting 11.7, and could go below that, but as a whole, that is about where you reach the point of economical operation on the wells that are making a high per cent of water.

Judge Sibley: Mr. Fischer suggested that an effort to return their investment on the well, along with the well operation, that is to be considered. Do you know whether that is ever figured on?

A. I will say that every well has some characteristic that is characteristic of an oil well and that is common to all oil wells, and one of those being in the East Texas field, it costs about $10,000 to drill one. Every well costs that everywhere in the field. That is a common element, and it represents from one-third to one-fourth of the value of the wells. In the middle, they are worth something more than that, but in general, that is about the way it runs.

Mr. Moody: Are you through, Your Honor?
Judge Sibley: Yes, sir.

By Mr. Moody:

Q. Mr. Hudnall, didn't you testify in the prior Rowan & Nichols case that it was necessary to give these wells a flat 20 barrel per well allowable in order to encourage drilling, that if you didn't give them that much allowable, a fellow wouldn't drill his well, and it was necessary to keep drilling wells?

A. Yes, sir; you can't drill wells and operate them—you can operate them down to 10, but you can't drill and produce on 10 barrels on the edge of the field. You just can't do it.

Q. Let me ask you this. Didn't you testify in that trial that disregarding that cost of drilling, just operating cost, you could produce those wells at 5 to 10 barrels and make [fol. 611] a profit on them?

A. That is in the middle of the field, but you can't, and I didn't so testify on the edge of the field.

Q. What did you say about parts of the field?

A. I don't know.

Q. You illustrated that you had a well with about 5 barrels——

A. No, I said my well was plugged at 10 barrels.

Q. You further testified there was a lot of water, and you were having to dispose of many, many times as much water as you were getting oil, and you really had a salt water well and not an oil well?

A. I said the well was making over 90 per cent water. I don't mean to lead this Court to believe you can operate a well in the center on less than 10 barrels, and you can't.

Q. About these potentials, that is one of the factors you multiply by in your formula?

A. Yes, sir.

Q. Now, then, so far as your potentials are concerned, they are not actually taken, but are calculated; isn't that right?

A. On each well they are not taken. On the key wells they are taken and are computed.

Q. You have got how many key wells?

A. About 270.

Q. 270 key wells out of 27,000. Take—26,000. You take the potential of about one in a hundred?

A. That is right.

Q. And from those wells you draw contour lines; isn't that right?

A. Yes, sir.

Q. And you divide out the distance between contour lines down into what number of feet?

[fol. 612] A. Well, you divide them out, depends upon the relative capacities of the two wells you are contouring between.

Q. Have we got a potential map over here?

A. I haven't seen it, if it is there; but generally speaking, it is contoured on 10 barrels per hour contour.

Q. It is contoured on 10 barrels per hour, and if you have got an 800 barrel potential line and a 700 barrel potential line, you just divide that distance actually, don't you, by 10?

A. Yes, sir.

Q. Between the controlled wells, and over to the edge of the field, 300 barrels is as far down as you take potentials, isn't it?

A. Yes, that is as far down as they take the potentials. The other contours from there to the edge of the field——

Q. Are largely a matter of projecting?

A. No, they are controlled by dry holes.

Q. And you know, do you not, in the East Texas field, wells whose potentials are calculated on that formula up as high as 200 barrels, they won't make 10 barrels to the well per day?

A. That is true.

Q. They are wells whose potentials, when you apply this formula to them, they are calculated as wells having 200 barrels per hour, and they won't make 10 barrels a day?

A. There are wells in the middle of the field that are contoured as having an allowable, and are dry holes.

Q. You are talking about wells that are producing under your formula?

A. Yes, but they get a very small fraction of a barrel by that potential.

[fol. 613] Q. Here is the question I have had in mind with respect to the former trial, page 552.

"Q. Now, from the standpoint you were talking about, profitable operation of a well, after a well is played out, why, it can be operated at a profit on an allowable from 5 to 10 barrels a day, can't it?

A. You are cutting hairs pretty fine when you pinch wells down to 5 to 10 barrels a day. They can be operated, but not with much profit. I had one well on the west side of the field I had to abandon when it got down to 10 barrels a day, and that was when we had a little better price than we have now.

Q. That was over in the water zone, wasn't it?

A. Yes, sir.

Q. You were having to take a good deal of water with your 5 barrels?

A. Yes, sir.

Q. All right. That complicated it considerably when it came to operating costs?

A. Yes, but there are some 3,000 or 4,000 wells making water that would have to be considered if you attempted to pinch those below 10 barrels."

That was your testimony, wasn't it?

A. That is my testimony then, and that is it now.

Q. Now, then, Mr. Hudnall, the—in the application of that formula, then, to the west side, is it not true that wells are given the advantage of having a sand thickness which, in reality, they do not have because of the encroachment of water, and those wells are given the credit for having a potential which, in fact, they do not have?

[fol. 614] A. Yes, sir.

Q. Because of the loss of the productivity of the well, and isn't it further true that on the east side, in the application of that formula, wells are given a potential—I mean an allowable, based on a potential very much higher than the potential that they have, and based upon also a sand thickness that doesn't take into account the net sand thickness, but taking out of it this hard stuff and shale, and one thing and another that you have been talking about as being over there on the east side?

A. That is true.

Q. And it is a further fact, is it not, that even after you give those wells on the west and the east that handicap, you are also—you are allowing them to produce very much—if you treated it all as saturated sand, and you treated it all as having the potential that they don't have, nevertheless, those wells would all produce more currently, according to what they have in their capacity to produce, than the wells in the fairway in the very best part of the field?

A. Correct.

Q. All right. Now, Mr. Hudnall—Mr. Tilley calls my attention to another question.

"Q. Where you have water to deal with, that complicates the thing, but wells in that field, if they are paid out, they can be operated at a profit on some production of somewhere between 5 or 10 or 12 barrels a day?

A. That is correct."

A. That is still correct.

Q. Mr. Hudnall, a while ago, you said the wells over on [fol. 615] the east, some of them, would quit producing be-

fore the water got over there. Assuming a tract on the east has 5 acres and 10 feet of sand, under this formula how much oil will that man have taken out, in proportion to his reserve, before his well quit producing?

A. I can't answer that question.

Q. Well, he would—he will have taken more than there was oil originally in place under his tract, won't he?

A. Generally speaking, that is true. I wasn't trying to evade the question. The whole thing would depend upon permeability. He might have one of those wells making 6 barrels a day.

Q. We will take most any tract on the east edge where a man has 10 feet of sand and a 5 acre tract, and a well on it, let him have about what is the ordinary normal potential they give them over there, and apply that formula; give him his 20 barrel minimum, and apply the formula to him, and he will take out more oil than he had originally under his land before ever the water gets to him, or before ever the well ceases to flow?

A. If he is in a good sand, he will do that.

Q. When you take some of these fellows on the east side in this area, what do you call this part? This is Kilgore right here, is it not?

A. Yes, sir, that is the Kilgore townsite.

Q. Right out all around in there it is just as densely drilled, almost, as it can be, isn't it?

A. Yes, sir, it is drilled up to about a well to an acre over a large part of the townsite.

Q. I am not talking about any special tract, but taking something like where there is a section of land, I believe that [fol. 616] is the Alexander Survey. I am talking about taking in this area here where the dense drilling is, and you apply your—give those wells 20 barrel minimum, and apply the formula to them, and those wells will produce from beneath those tracts more oil than there ever was under them before ever they are drowned out, or before they go off of production; isn't that true?

A. Generally speaking, that is certainly true.

Q. And you could take that true on an area of a section of land, 640 acres, couldn't you?

A. You probably could there to the west. To the east, of course, there are already 15 or 20 wells plugged and abandoned.

Q. There are wells around the outskirts of Kilgore that are as good as any in the field?

A. Yes, sir, there are good wells.

Q. For instance, you take up here in the J. Moseley and D. Moore and C. H. Alexander Survey, where it is densely drilled, right south of Rowan & Nichols tract, and adjoining the Castleberry Survey, in the application of this formula, those surveys will get much better benefit out of that order than the area around the Rowan & Nichols tract where it isn't so densely drilled?

A. Yes, sir, they will get some benefit out of it.

Q. That all comes about, doesn't it, by reason of the flat 20-barrel per well minimum?

A. Yes, sir, that is right.

Q. On that 20 barrel per well minimum, have you ever known of the Railroad Commission putting an order in force in East Texas that allowed the wells to produce less than 20 barrels a day on the days they were allowed to produce, since the marginal well law went into effect, if they could make it?

[fol. 617] A. No, they have never had that.

Q. Every proration order they have had since that time allowed every well in the field that could make 20 barrels, to make 20 barrels, didn't it, in its practical application?

A. Yes, sir, that has been true since June, 1933, when they dropped it from 40 down to 20.

Q. That was about the time the first marginal well law went into effect, the 20 barrels?

A. At 20 barrels, yes, sir.

Q. And ever since then, they have been giving them 20 barrels if they would make it?

A. Yes, sir.

Q. And now, when they get to where they have got so many wells they can't produce the field on seven days a week and allow the 20 barrels and stay within the marginal well law, they just cut down the number of days they allow them to produce in a week, and allow them 20 barrels?

Mr. Hart: If the Court please, that includes a question of law.

Mr. Moody: —and let them get 20 barrels——

Judge Sibley Yes, you are putting motives in with the facts.

Mr. Moody: I beg your pardon.

Q. The facts are these, that when the number of wells drilled in the field got so great and the market demand got down so low, that they couldn't produce all of the wells in the field capable of making 20 barrels a day with a minimum of at least 20 barrels a day and keep the field producing seven days a week within the market demand, then the number of days that the wells were allowed to produce [fol. 618] during the week was cut down, and the wells were allowed to produce certain days, if they would produce the 20 barrel minimum; isn't that right?

A. I can tell you when they did it.

Q. I am not asking you when. I am asking if that isn't true about the orders in the field.

Judge Sibley: The orders say that.

Mr. Moody: I don't think we have all of them here. I am talking about over a period of years.

Judge Sibley: We had the stipulations since August.

Mr. Moody: I am undertaking to show back of August.

Judge Sibley: Why should we worry about those back ones, anyhow?

Mr. Moody: Very well, sir.

Q. Now, Mr. Hudnall, with respect to these so-called marginal wells, these wells that cannot be made to produce in excess of 20 barrels a day, prior to June 24, 1940, is it not a fact that what the Railroad Commission did was to allow those wells to produce over seven days what was their maximum capacity or would have been their maximum capacity for four days, if the shutdown period was three days a week, and five days, if the shutdown period was two days a week?

A. That is correct.

Q. And so, up to January 4, 1940, the Railroad Commission undertook to curtail the production even of the so-called marginal wells; isn't that right?

A. Yes, sir.

Q. That is all, Your Honor.

Mr. Saye: I would like to ask one or two questions, if Your Honor please.

[fol. 619] Cross-examination.

Questions by Mr. Saye:

Q. Mr. Hudnall, the effect of the modifications of the order permitting the marginal well to produce seven days

out of the week, now, the effect of that is that if the marginal well produces, say, 19 barrels per day daily, and then immediately offsetting that you have a well that is better than a marginal well, that will produce above the 20 barrels within a week's time, then the so-called marginal well will be permitted to produce 192 barrels more per week than the well that is permitted to produce the 21 barrels, won't it?

A. I don't quite get that much oil, in my head calculation, I will be glad to make a more detailed calculation.

Q. I should have said in a month. It is 48 barrels per week. See if that isn't right.

A. I get 53 barrels, total.

Q. You take a little more than four days on one, 53 barrels, which one——

A. The well that produces 19 barrels a day for seven days a week produces 133 barrels. The well that produces 20 four days a week would produce 80; so, the 19 barrel well will produce 53 barrels total more during the week.

Q. Well, I put it, I think my figure was on 21 barrels. That would give the illustration I wanted to know. If you made a correction so as to permit the offset well to produce as much as the marginal well, that would also create a condition where you would have to make the same correction to the offset well to that well, and carry that plan on progressively, so that you would reach the practically flat allowable—I mean minimum allowable of 20 barrels?

[fol. 620] A. Yes, sir, that is true, a minimum of that. It would necessarily mean that each well would have to have exactly that.

Q. Well, it would be approximately the result, wouldn't it?

A. Yes, sir.

Q. Now, Mr. Hudnall, at the time this suit that Mr. Baker was talking about was brought back in 1933 and tried before Hutcheson, Judge Wilson, and Judge Bryant in Fort Worth, that is the suit you referred to attacking the potential order, wasn't it?

A. Yes, sir, it was.

Q. Had the limits of the field been defined at that time?

A. The limits were indicated. The field wasn't developed.

Q. What was the total allowable, the top allowable, at that time?

A. It reached a little over 800,000 barrels a day, around 815,000 as I recall it, about the time of the trial.

Q. The top allowable at the time, with the field developed to that extent, was in excess of 800,000 barrels?

A. Yes, sir, it was.

Q. And that suit was brought by the Humble and a number of other companies together, wasn't it?

A. Yes, sir, the Hunt Production Company filed the suit, and the Humble and a great many others were intervenors.

Q. And they were denied the interlocutory injunction on that?

A. Yes, sir, that is correct.

Q. That is all.

Questions by Mr. Baker:

Q. I wanted to ask you a question or two, please. Mr. Hudnall, isn't it true that comparatively speaking, prac-
[fol. 621] tically all of the wells in the East Texas field have been completed about as much as two years?

A. There were about 400 wells drilled last year and about 1700 the year before, as I recall the figures, and all other than those were completed more than two years ago.

Q. I see. Now, isn't it a fact that those wells which have been completed more than two years should have paid out under the allowables permitted?

A. Most of them would be, only in those where they were drilled in the margin of the field, and had unusual problems such as water production, or high pumping cost due to paraffin, that would be the case.

Q. Then, from an economical standpoint, the problem for most of the wells is merely operating cost; isn't that true?

A. Yes, if they just want to break even.

Q. Isn't it a fact, Mr. Hudnall, that there are many wells in the East Texas field that have been producing 5 barrels or less over a long period of time?

A. Yes; there are not a great many, but I believe there are some fifty or one hundred of these sub-marginal wells on the east side. They don't have any of those on the west side that I know of, but there are a number of them on the east side that have produced down to that.

Q. Up until the February order, they stood their part of the cut incident to the shutdown days, didn't they?

A. Yes, sir; that is true, but in most of the cases, those wells were cases where they had one marginal well and from

one to five other good wells on the lease, so the whole lease was operated, and the marginal well was operated just as a part of the lease.

Q. But they continued to operate the small wells?

[fol. 622] A. That is correct.

Q. I would like to get something clear in my mind that you were testifying about a while ago. I want to ask you about the well, say up here in any part of the field, a well on the east side in any part of the field where you have a good sand, it is ten feet thick, and you have average potentials and average pressure, how, assuming an efficient operation for this field, maintenance of a top allowable at such figure as for a reasonable length of time would maintain gas in solution, how long would you expect a well with ten feet of good sand along the east side to produce, how many years?

A. If it is real good sand, I think it will produce for fifteen to twenty years.

Q. Fifteen to twenty years?

A. That is right.

Q. How many acre-feet of sand would a five-acre—well, on a five-acre tract, or, rather, a five-acre tract have?

A. A five-acre tract with how many feet of sand?

Q. Ten feet.

A. Fifty acre-feet.

Q. Fifty acre-feet of sand. Assuming that a 900 barrel per acre-foot recovery, how many barrels of oil in place would that five acres have?

A. 45,000.

Q. 45,000 barrels. Under this existing formula, proration order, what would be the production per day of one well on such a five-acre tract?

A. It would average about 11.7 or possibly 12 barrels a day throughout a thirty-day period, about 12 barrels, say.

Q. Would you compute, figure how much oil that five acres would be permitted to produce under this order dur-

[fol. 623] ing the period of the producing life of that property?

A. About 65,000 barrels, on a fifteen year life.

Q. Haven't you made a mistake there?

A. I don't see it.

Q. All right. 65,000 barrels. Now, suppose that instead of having one well on that five acres, you have five wells on that five acres, what would be the average allowable per well?

A. That would still be approximately the same as the other.

Q. How many barrels a day would that tract be permitted to produce?

A. About 60 barrels.

Q. About 60 barrels a day. Would you please figure how much that tract would be permitted to produce during fifteen years remaining life?

A. About 325,000 barrels.

Q. Against 45,000 barrels in place?

A. Yes, sir.

Q. There are many areas in the—along the east side of the East Texas field, say in the eastern one-third of the East Texas field where you have densely drilled areas in there, are there not?

A. Yes, sir.

Q. And you may not get as much then, proportionately, because those wells would be permitted to produce much more than the reserve?

A. That is correct.

Q. Many times more in many cases, would they not?

A. Yes, sir.

Q. Where would that oil come from?

A. It would come from the thicker sand area from the [fol. 624] west and from the west side of the field. It would be replaced continuously to some extent.

Q. Wouldn't most of it come from the fairway?

A. That is true. It would come from the fairway, but the fairway, in turn, would get it from the west, but actually, there wouldn't be any of it that would move more than a thousand or 1500 feet.

Q. Any possible drainage from the west to the fairway isn't at all in proportion to the drainage from the fairway east, is it?

A. No, sir; it isn't exactly, no, sir.

Q. That is because there is so much more oil, the sand is so much thicker in the fairway?

A. Yes, sir; that is true.

Q. I believe that is all.

Redirect examination.

Questions by Mr. Hart:

Q. Mr. Hudnall, you were asked certain questions abou the practice of the Commission on this isopach map whic was introduced here, of showing the original sand thick ness. In the producing life of leases on the west side o the field, I believe you have already testified they woul have a relatively short producing life; is that correct?

A. That is correct.

Q. Unless they get their oil now, they will not get it?

A. That is correct, and they will not drain very muc oil from anybody else.

Q. If,—I am not speaking of the densely drilled tract but the average tracts on the west side.

[fol. 625] A. Yes, when you take the area as a whole an compare it to the rest of that field.

Q. If they are to be allowed to get their oil. There ha been some reference of some compensating factor to allo them to get a relatively higher percentage at this time. I the pressure factor one of those factors?

A. Yes, sir.

Q. And is the fact that the Commission gives to them th original thickness one of the factors that lets them ge their oil while they can still produce?

A. Yes, sir.

Mr. Moody: By their oil, do you mean the oil under thei leases?

Mr. Hart: I mean the oil underneath their leases.

Q. There were some questions asked you by Governo Moody with reference to the rise in the water table, and believe you testified that, of course, as the field was de pleted to the east, the rise would become greater when yo got over toward the east side of the field?

A. Yes, sir.

Q. What would be the relative rate of rise in the wate between the rise, as comparing the rate of rise from th opening of the field up to date, and the rate of rise tha would be expected from now until the water got to th Rowan & Nichols lease? Would there be very much diffe ence in the rate of rise?

A. Very little difference, probably less than 10 per cent, but in terms of feet, it would be less than a foot a year.

Q. I believe there were some questions about the Defendants' Exhibit 14. By 1934 there had been estimates made as to the extent of the limits of the field, was there not?

[fol. 626] A. Yes.

Q. Those estimates went beyond the actual drilled areas, didn't they?

A. Yes, I made estimates even in 1931 and estimated at that time there was 121,000 acres in the field between the limit lines, but it wasn't all developed.

These additions that you have spoken of are additions to actually developed portions of the field, not necessarily additions to estimates that had been made of the field's extent?

A. Yes, sir; that is correct. It is the actual areas on which they have drilled wells, on which there were no wells before.

Q. There was a question asked you whether if parts of the field were abandoned in the future, the allowable to the wells would go up, and I think the phrase "allowable per well" was used at one time. Did you or not mean by that the base or minimum allowable would increase, or did you mean the production of the well would increase?

Mr. Moody: We object to that because he couldn't possibly know whether the Railroad Commission is going to distribute the excess on the formula basis, or per well basis.

Mr. Hart: That was asked him.

A. The total production from the well would increase.

Q. That is what you meant in reply to the question?

A. That is correct.

Q. I think that is all.

Recross-examination.

Questions by Mr. Moody:

Q. I would like to ask one question. Mr. Hudnall, with respect to that rise of the water under the Rowan & Nichols [fol. 627] lease you claimed wouldn't be more than 10 per cent, that depends, does it not, upon the rate of withdrawal from the field remaining, in that ratio that 699,000 bears

to the 3 billion—2,600,000 you say there is oil remaining in that field?

A. It would be in the ratio of the volume withdrawn, yes, sir.

Q. And as the per cent of—as the ratio of that withdrawn to that remaining in the field increases, that rate of rise of water will increase, and also as it gets into that narrow part of the field it will increase, the rate of rise?

A. That is correct.

Mr. Moody: That is all.

Judge Sibley: We will adjourn until 2:00 o'clock.

Thereupon, Court was recessed at 12:00 o'clock M. until 2:00 o'clock P. M.

[fol. 628] Friday, February 16, 1940.

Afternoon Session, 2:00 o'cloock

IONEL I. GARDESCU, a witness for the defendants, was sworn, and testified as follows:

Direct examination.

Questions by Mr. Hart:

Q. State your name, please.

A. Ionel I. Gardescu.

Q. Where do you live, Dr. Gardescu?

A. In Houston.

Q. What is your business or occupation?

A. I am a consulting petroleum engineer and geologist.

Q. Would you state briefly your academic training or education for your profession?

A. My college training was begun in Rumania before the war. I took three years at the Polytechnic University. Then I went into the Army and fought in the war as a commissioned officer. And after that I took one year of university work at the Royal Technical College at Glasgow. I majored there in chemistry and physics. In 1920 I came to the States, and I took my specialized work in geology and petroleum engineering and received my professional degree of petroleum engineering in 1922 from the University of Pittsburgh. Then I followed that with the academic training. In 1926 I started on my post-graduate work at Stan-

ford University and at the University of California, also pursuing my graduate work in geology and petroleum engineering. I received my Doctor's degree in petroleum engineering from the University of California.

[fol. 629] Q. When did you receive your Doctor's degree at the University of California?

A. 1931.

Q. Now, have you had practical experience in the practice of your profession, and particularly in the work of evaluation of oil and gas properties?

A. Yes, sir.

Q. Would you state just briefly what experience you have had along that line, what practical experience?

A. In 1920 I was engaged by the firm of Johnson, Hunting and Summers as a valuation man. That same year one of my early papers on valuation had been published in the Bulletin of the American Association of Petroleum Geologists. I pursued my valuation of geological properties. In 1923 I was invited by the Rumanian Government to come to Rumania and organize and be head of their department of oil and gas valuation, which I did. After I finished that job, I was with the Standard of New Jersey in Rumania as their sub-surface geologist and petroleum engineer, and I resumed my activities in valuation. And since 1936, when I established my headquarters in Houston, I have been continually engaged in valuation work, and my firm now, that is Gardescu and Speed, we are engaged actively in valuation work. I also taught valuation for five years, four years at the University of Pittsburgh and one year at Texas A. & M. College, 1933 to 1934.

Q. What experience have you had in connection with the East Texas oil field?

A. East Texas oil field. I kept in close touch with it. I wasn't in charge of any active project, but I kept in close touch beginning in 1931, I believe, when the Gulf Research Laboratories, I was research engineer for them, and they [fol. 630] were following that very closely, and since that time the Bureau of Mines has sent me on several occasions reports; some are confidential reports, and I collaborated with them. I visited the field several times. I made studies. In 1934 I was accompanied on my trip there by the sub-surface geologist of the Texas Company who is in charge of their sub-surface work, and on and off I studied

some Rule 37 cases, and then I studied a great deal, everything that was said and done by the East Texas field.

Q. Are you a member of the Houston Geological Society?

A. Yes, sir.

Q. Have you worked with other geologists and petroleum engineers in Houston in the formation of a reference library in Houston which is used by them?

A. That is not connected with the Houston Geological. The Houston Geological have what they call study groups, in which they study various problems, and one of their major problems is the question of valuation of oil and gas reserves as it occurs in different fields, and during the last three terms I was the group leader in this study group. Now, that other question, the expert witness reference library, it was a study I made for some companies.

Q. Which companies do you refer to, please?

A. I beg your pardon?

Q. Which companies do you refer to?

A. The companies that supported that were the Humble and the Texas Company.

Q. Dr. Gardescu, have you studied and are you familiar with the leases of the Humble Oil & Refining Company in the East Texas oil field?

A. Yes, sir.

[fol. 631] Q. Have you made detailed studies of their leases in order to make an estimate of the ultimate production from their leases, based upon the depletion of their leases which had occurred up to about August 15, 1939, at the time a questionnaire was sent to them by the Commission—or at the time they answered the questionnaire of the Commission?

A. Yes, I have. I have studied the depletion of all of the leases of the Humble Company that were classified in that questionnaire as being depleted leases.

Q. Now, just enumerate, please, what different records and data you studied in making this estimate.

A. I studied every single log that was on record with the Railroad Commission on every one of these leases of the Humble Company, and I have tabulated and I have in my work sheets the data pertinent to this issue that I have taken on these logs, that is, the top of the sand, the bottom of the sand, the position of the perforation or screen, which is a section through which these wells are producing, the percentage and behavior of the water in these wells taken

from the water reports of the Bureau—of the Railroad Commission. I have picked all of the electrical well logs, what we call the Schlumbergers, had about a thousand logs at my disposal, and I took every single well that had a record within the vicinity or on this lease. Furthermore, in areas where there were no wells drilled sufficiently deep to give me positive figures as to the position of the water, I have gone to the record of wells drilled all around these leases, and I consider that as thorough a study as can be made.

Q. Did you also study and consider in your estimate the answers which the Humble Oil & Refining Company made [fol. 632] to the Commission in reply to this questionnaire that was sent out in August of last year?

A. Yes, sir, I have.

Q. Did you make an estimate of the depletion of the leases of the Humble Oil & Refining Company in acre-feet of net effective oil sand?

A. Yes, sir, I have.

Q. What estimate did you arrive at?

A. I have two estimates. I made one estimate based on the sand thickness that is shown by the Humble in the questionnaire, and from that derived the other factors. Of course, the top of the sand, I took that from the log. I have also prepared a calculation entirely independently of this, taking the thickness from the Railroad Commission map, and I wanted to satisfy myself to what extent there is a difference of opinion as to the sand, which is, of course, an important factor. Now, the calculation based on the Humble sand estimate added to 120,000 acre-feet depleted, and the calculation based on sand thickness taken from the Railroad Commission map adds about 118 and a fraction. The average of the two——

Q. You mean 118,000?

A. Yes, thousand acre-feet. The average of the two is 119,000, or I think the exact number is 119,035.

Q. Doctor, did you make your calculations prior to Mr. Moore's testimony in this case in which he gave some estimates?

A. Yes, sir.

Q. Do you recall what estimate Mr. T. V. Moore gave of the depletion of the Humble leases in acre-feet?

A. I didn't listen to the testimony, but I have had the transcript of his testimony, and if I recall right, it is 119,400

[fol. 633] acre-feet. I think that is a difference of three-tenths of one per cent.

Q. Have you figured out the depletion in acre-feet—or the percentage of depletion of the Humble Oil & Refining Company leases to the date of August 15, 1939, in acre-feet?

A. Yes, sir. That is, I took the figure for the total original acre-feet of the Humble, the figure that Mr. T. V. Moore had calculated. I have not made that calculation because, as I said, I did not calculate those leases that have not been depleted, and I didn't have the physical time to make one, and using that total, which is 707,700 acre-feet, the value of depleted sand in acre-feet of 119 represents about 16.82 per cent.

Q. Now, Doctor, is it possible to arrive at a reliable figure as to the ultimate production from the leases of the Humble Oil & Refining Company, based on their depletion up to date, which you studied, of August 15, 1939?

A. Yes, sir.

Q. Up to that date?

A. Yes, sir.

Q. Is the method which you used in arriving at the figure, the estimate—or have you made an estimate of the ultimate production of the Humble Oil & Refining Company leases, based on that study that you have made?

A. Yes, I have.

Q. Is the method of calculation one which you consider to be an accurate and reliable method of calculation?

A. I consider it accurate, and I have used it frequently, and I consider it reliable.

Q. Will you state what is your estimate of the ultimate [fol. 634] recovery in barrels of oil from the Humble Oil & Refining Company leases in the East Texas field?

A. According to my calculations, it is 780,000,000 barrels.

Q. Do you know what figure the Humble gave as their estimate of the original amount of recoverable oil underneath their leases, what estimate they gave in this trial?

A. No, I don't. That would depend very much on what original per acre-foot they used, and I don't know what is the latest now, because you have the original volume of acre-feet, and if you multiply that by seven or eight or seven hundred, or various factors of original acre-foot, you would get different figures as to what would be the recoverable oil from those 707,000 acre-feet.

Q. Assuming a high recovery, assuming a thousand barrels per acre-foot recovery, what would be the production from their leases, or recovery from their leases, assuming one thousand?

A. That would be 707,000,000.

Q. Your estimate of the ultimate recovery is how many million?

A. It is 780.

Q. That is 780,000,000 barrels?

A. Yes, sir.

Cross-examination.

Questions by Mr. Baker:

Q. You mean the estimate of the original acre-feet—I mean the original recovery from Humble properties?

A. Not original recovery. That would be the Humble, if they would continue to produce the way they are, that would be what they would eventually get.

Q. Counting the original number of acre-feet that it had?

[fol. 635] A. Counting the original acre-feet and the amount of oil that they have been producing right along as related to the per cent of sand depleted.

Q. Is that total estimated recovery or remaining estimated recovery?

A. No, that is the total. This is the total, ultimate.

Q. Now, Dr. Gardescu, what recovery figure did you employ per acre-feet?

A. I don't employ any recovery per acre-foot.

Q. Then how can you estimate the future recovery if you do not estimate how much the recovery will be per acre-foot?

A. In a field that is being drained, you can't use any such figure as recovery per acre-foot.

Q. After you get the figure all drained, if you had so many acre-feet to begin with, and you have no acre-feet left, and you recovered so much oil, can't you figure how much the recovery would be per acre-foot?

A. Yes, sir, if you work your yardstick. I have done that in all this work. That is, you figure out for the field as a whole how much has been depleted and how much has been produced, and you figure your yardstick, which is recovery per acre-foot depleted, and then you multiply that by the figure representing the total acre-feet that you have.

Q. Now, that is what I wanted to get at, Doctor Gardescu, what recovery figure did you use to multiply by the acre-feet in arriving at your result?

A. I took the relationship of depletion to recovery. Now, that does not mean that the acre-foot under the Humble's lease will produce that much from that one-acre-foot. If you want to divide it that way, just take the recovery—it [fol. 636] means that with drainage towards the Humble lease and away from the Humble lease, on that basis the recovery would figure about for the Humble leases 1,100 barrels per acre-foot.

Q. That is over-all?

A. Over-all for the Humble leases.

Q. 1,100 barrels per acre-foot?

A. Yes, sir.

Q. Now, then, have you figured how many barrels per acre-foot the drainage has been up to date on the Humble leases?

A. On the Humble leases?

Q. Yes, sir.

A. Yes, I have. How many barrels—how many acre-feet have been drained?

Q. Yes.

A. Well, that is 119,000 and a fraction.

Q. What is Humble's recovery up to date?

A. 131,000,000.

Q. 131,000,000?

A. Yes, sir.

Q. Now, what would be the recovery per acre-foot, assuming that 119,000 acre-feet is the number of the Humble acre-feet?

A. Well, that is just what we have been talking about. You divide 119 into 131, and that will give you 1,100.

Q. You were talking about the Humble recovery up to date?

A. Up to date and in the future.

Q. Well, I would like to separate that, if you please, Doctor. The answers are confusing to me.

Judge Sibley: To date is a fact, and in the future is a prophecy.

A. I have a chart that shows that what it is, it is a straight line. If you count on one side 119, put your per- [fol. 637] centage depletion on one side and your recovery

on your bottom line and put a point there that corresponds to 119,000 acre-feet, and that same point corresponds to 131,000,000 barrels, and then draw a line through that point, you will get your relationship.

Q. That is right. Just answer my questions as I propound them, and we will get along a little bit faster.

A. Yes, sir.

Q. You say that the Humble leases have been drained to the extent of 119,000 acre-feet?

A. That is right.

Q. You say the Humble leases have produced 131,000,000 barrels of oil?

A. That is right.

Q. Now, then, how many barrels of oil per acre-foot to date do you calculate the Humble leases have produced?

A. The Humble leases, based on their depleted acreage, have produced 1,100 barrels of oil.

Q. All right, to what extent has the field as a whole been depleted up to this date in acre-feet?

A. That would depend on how much the ultimate recovery of East Texas is going to be.

Q. Let's forget about ultimate recovery.

A. Well, now, how are you going to determine the depletion?

Q. Well, you just figure exactly the same way you did for the Humble property.

A. You give me two months' time. I have been here two weeks working day and night for these Humble leases, and using all of that data which is available. You give me time, and I will be very glad to do it.

[fol. 638] Q. Do you know how many acre-feet of sand were originally in the East Texas field?

A. No, sir, I don't know. That is, I know of the estimates, but I have not calculated it myself.

Q. You have not calculated that?

A. No, sir.

Q. Now, would you accept the Railroad Commission's figure?

A. Well, if I understand that, the Humble estimate and the Railroad Commission estimate as to the acre-feet comes pretty close, and we can start on that assumption, that it is a reasonable estimate.

Q. Well, let's take the Commission's figures.

A. All right, sir.

Q. Of about 4,962,000.

A. Four million, nine hundred sixty what?

Q. 62,000, approximately.

A. Yes, sir.

Q. 4,962,000.

A. Yes, sir, acre-feet, East Texas originally.

Q. Now, you said the Humble and the Railroad Commission original acre-feet figures were practically the same, did you not?

A. That is my recollection, that it is as close as calculations of that type can be gotten.

Q. Don't you think it would be reasonable, then, to take the Humble figures for the amount of acre-feet for the field which have been depleted?

A. I am sure the Humble must have worked that very carefully. If you want to use the Humble figures.

Q. The Humble figures 910,720 acre-feet of sand depleted for the field.

A. All right. Not depleted; you mean the original.

[fol. 639] Q. That is depleted up to date.

A. How much is depleted?

Q. No, that is the number of acre-feet that have been flooded by water, according to the Humble figures.

A. I am not going to accept the Humble's figure on that, because you say in the questionnaire a figure of 147,000 acre-feet, and I have calculated that to be 120 on one basis.

Q. Well——

A. Let me answer. You asked the question.

Q. Excuse me.

A. And 118,000, and then Mr. Moore comes and says it is 119, and the questionnaire shows 147. You place me in an embarrassing position to accept the figure.

Q. Dr. Gardescu, I am not talking now about the extent to which Humble Company's properties have been depleted.

A. No.

Q. I am talking about the extent to which the properties in the field as a whole have been depleted.

A. That is something that I would not accept a figure without going into it very carefully. I don't know what method the Humble has been using.

Q. If you were told that the Humble has an isopach map and from that isopach map it has computed its depletion up to date, and from the same isopach map it has computed the field depletion up to date, and its isopach map, its

original isopach map is in substantial agreement with the Commission's——

A. The isopach map has very little bearing to the amount of depletion. That is the position of the water level in the various wells, and I have found great discrepancies between the actual facts as I have found out to be from the [fol. 640] logs and the Schlumbergers, and the assumptions made by the Humble.

Q. Now Doctor, you said in the beginning that you were willing to accept the Humble Company's figures as to the original acre-feet?

A. Yes, sir.

Q. And you said they corresponded with the Commission's?

A. Yes, sir.

Q. You said that you were willing to take the Humble's figures likewise on the number of acre-feet remaining in the field?

A. No.

Q. As of that date?

A. No.

Q. What you really said was that you were willing to take the Humble Company's figures on the extent to which the field has been depleted in acre-feet of sand?

A. No, sir. We will have to go back through what I said to see. I don't recall having said that.

Q. Well, I am positive of it.

A. We agreed to the original.

Q. I am positive you did; if you will turn back and read it, you will find you said it.

A. If I did, I don't remember, because I don't have anything on this pad. I wrote the figures you gave me, and I don't have anything that would anywhere near come around what the remaining acre-feet is.

Q. I gave you the figure of 910,720 acre-feet as the Humble figure.

A. You gave me——

Q. Excuse me.

A. Yes, sir.

[fol. 641] Q. As the Humble figure outlining the extent to which the field as a whole has been depleted to date. Did you take that figure down?

A. What figure is that?

Q. 910,720 acre-feet.

A. No. I put in here 4,900,000 as against 4,960,000, thinking that was your figure of the original.

Q. Well, let's go ahead from here now, just taking that figure.

A. What figure?

Q. 910,720.

A. Why should I take that figure?

Q. Because that is the Humble's figure. I want you to do some calculating.

A. On the assumption of the Humble's calculations, I will be glad to, but I wouldn't vouch for it.

Q. That is all right. Just take that figure, if you please.

A. Let me get this right, because we might get mixed up again.

Q. Yes, sir.

A. 910,720 acre-feet is the depleted East Texas acre-feet, acre-feet depleted in East Texas as a whole?

Q. Yes, sir. Now, will you tell me, please, what the accumulated production from the East Texas field is up to date?

A. 1,370,000,000, is that right? You know those figures.

Q. That is approximately right, I think.

A. All right.

Q. Now, will you please calculate according to those figures how many barrels would have been recovered per acre-foot of sand depleted?

A. That—I don't have a slide rule, but 1,400 would be close enough. T. V. Moore there has that.

[fol. 642] Q. Wouldn't 1,499, or say 1,500 be about right, Doctor?

A. Yes, sir. Have you heard?

Q. Beg pardon?

A. I say have you heard of such a recovery? But I am not supposed to ask questions.

Q. They have already gone into that, Doctor. Now, subtract from the 1,500 the 1,100.

A. Listen, if any man came and told me to take 1,500 recovery and do something with it, I will take my hat and walk off. You are asking me something that is utterly unreasonable. In twenty years' evaluation, I have never heard of such a figure.

Q. Doctor, I will get around to that directly. Will you please make the subtraction?

A. All right, but we are playing with figures.

Q. No; the Court has heard a little more than you have, I believe.

A. All right, out of 15 what shall I take out?

Q. 1,100.

A. 1,100?

Q. Yes. Now, does that indicate that the field as a whole has recovered 500 barrels of oil per acre-foot more than the Humble Company has for the number of acre-feet depleted?

A. On these figures that is what it shows.

Q. 400?

A. 400, yes.

Q. Now, what percentage is that more per acre-foot?

A. Well, four divided by 15 is about—how much recovery per acre-foot, do you want to give it as a base?

Q. I just want the percentage.

[fol. 643] A. You have to get the 400 in per cent of something else. I can't get 400 in per cent of nothing else.

Q. Find out what per cent 1,100 is of 1,500.

A. 1,100 of 1,500. You had better give me that slip stick. Eleven by fifteen is 73.3.

Q. All right. Then according to those figures, the Humble Company has recovered only 73.3 per cent as much oil per acre-foot as the balance of the field?

A. That is right.

Q. According to those figures?

A. That is right.

Redirect examination.

Questions by Mr. Hart:

Q. Dr. Gardescu, is an assumption of 1,500 barrels per acre-foot recovery in the East Texas field a reasonable assumption to make, in your experience?

A. That is most unreasonable I have used for years. If I didn't know just blindfolded like that and how much you would use. It is a standard 800, 700, something like that. It might be a little higher, or it might be a little lower, but I never heard to this day, I have never seen a figure that would come to 1,500 barrels recovery per acre-foot.

(Witness excused.)

Mr. Hart: If the Court please, we wish to offer in evidence the order of the Railroad Commission dated July 13, 1939, and this spacing rule for East Texas that was offered before in the hearing at Houston on the temporary injunction where the injunction was denied.

[fol. 644] Judge Sibley: Should we know what it is? What did it provide?

Mr. Hart: It provided for the drilling of wells at a distance of 660 feet to any other completed or drilling wells, or 330 feet to any property lease line or subdivision line without the necessity of getting a permit; closer than that with permit, providing the Railroad Commission could on its own motion hold hearing for permission to grant man to drill wells.

(The above referred to document was thereupon received in evidence and marked Defendants' Exhibit No. 15.)

Mr. Hart: We also offer certified copy of the order of August 26, 1935. I don't think there is anything I need to read to the Court at this time in connection with that. I want to offer it for the record, showing part of the orders of the Commission.

(The above referred to document was thereupon received in evidence and marked Defendants' Exhibit No. 16.)

Mr. Hart: May it be stipulated that none of the plaintiffs in this case have applied for or been denied by the Commission a right to drill any additional wells on their leases in the East Texas field?

Mr. Baker: No, sir, it cannot be stipulated, because the Commission has recently denied the Humble Company a number of applications for permits.

Mr. Hart: Well, you are not complaining of that in this case, are you?

Mr. Baker: We are not complaining, but I want to introduce a tabulation, since you have raised the question. I would like to introduce a tabulation showing exactly the [fol. 645] permit——

Judge Sibley: Just let him get through. The stipulation is denied. What next?

Mr. Hart: I think the pleadings speak for themselves on that. Will you stipulate with me?

Mr. Moody: No, but I will stipulate what the facts are, that Rowan & Nichols applied to the Railroad Commission

for permit to drill their Todd "B" lease to the average density of the field, and that the Commission refused thirty-odd and granted one.

Mr. Hart: The Todd "B" is not in this case. If the Court please, in view of what Mr. Baker has said——

Judge Sibley: Let's keep it straight. Are you going to stipulate what he said?

Mr. Hart: No, sir.

Judge Sibley: All right, the slate is clean on stipulations.

STIPULATION

Mr. Hart: Mr. Baker, listen to this, please. Can you agree to this, that on August 16, 1939, the Commission called a hearing to determine whether or not additional wells should be given—additional permits to drill wells should be given to the Humble Oil & Refining Company on its leases in the East Texas field, and that at the same time the hearing on the adjustment of allowable on the Humble leases; that the hearing was held, evidence introduced on the application for an adjustment of allowable, and that at the conclusion of that the following statement was made by Mr. Taylor, and to which you made the following reply:

"The specific hearings ordered by the Commission to determine whether additional wells should be granted The [fol. 646] Humble Oil & Refining Company will be postponed to a future date, and a new hearing will be definitely ordered and notice given to all interested parties. Does the Humble have any objection?

"Mr. Baker: No, sir, we didn't call it, and you can postpone it forever so far as we are concerned." Do you agree that that transpired?

Mr. Baker: Yes, sir.

OFFER IN EVIDENCE

Mr. Hart: Now, there are one or two other places in this transcript, which I can't put my hands on them, where Mr. Baker stated to the effect that the Humble didn't want any more wells, hadn't applied for them, and didn't want to have a hearing on that as far as they were concerned. May I put those in evidence?

Mr. Baker: At that particular hearing?

Mr. Hart: Yes, sir.

Mr. Baker: That is right.

Note: The portions of the transcript above referred to are set out at side fols. 656 to 658 hereof.

Mr. Hart: May it be agreed that I may have those copies from here, and put them in evidence later?

Mr. Baker: Yes, sir.

Mr. Hart: All right.

Mr. Baker: Now, Your Honor, what he said there related to what we were seeking. We were not seeking more wells at the time, and we didn't ask for the hearing, but I want to introduce in evidence here a list, a tabulation which is certified to by the secretary of the Railroad Commission, showing the applications for permits to drill oil wells as exceptions to Rule 37, denied by the Railroad Commission, from January 1, 1938, through January 30, 1939.

Mr. Hart: If the Court please, we want to object to that, [fol. 647] because there has been no pleading here by the Humble that they have made no application that wells be granted, and no complaints made of any others of the Commission refusing them.

Judge Sibley: Of course, we are not trying that. It is sort of a reply to the contention that the remedy is more wells. I suppose it would throw such light on that as it will.

Mr. Hart: We except.

Judge Sibley: I will admit it for what it is worth.

Mr. Baker: This shows, Your Honor, that under Humble Oil & Refining Company, that fourteen applications of the Humble Oil & Refining Company for permit to drill additional wells in the East Texas field were denied by the Railroad Commission from October 29, 1938, to—no, from September 21, 1938, to sometime in March, 1939.

Mr. Hart: If the Court please, we further object to that, because there is no showing where those applications were made or what grounds the Commission had for refusing them, whether there has been any appeal taken to the Texas courts as provided by the statute in such cases. There is no showing of that at all.

Mr. Baker: Your Honor, this goes, of course, into the record for the purpose of showing the attitude of the Commission. Mr. Hart has asserted, or at least, the Commission has taken the position in this lawsuit, that the possible

remedy is more wells, implying but not saying that the Commission would give more wells. This shows what they do.

Judge Sibley: I ruled on that part and let it in. The present objection is that it does not appear that the action [fol. 648] is final.

Mr. Baker: One who is denied a permit, of course, does not have to appeal, but he has the privilege of appealing.

Judge Sibley: I don't know what the lay may be about the exhaustion of the remedy.

Mr. Hart: Your Honor, the Commission's actions are prima facie valid.

Judge Sibley: Of course, that is true of all actions of the Commission; presumptively, they are right. That is true of the one we are dealing with here. I suppose if the secretary certifies that those applications were made and denied, that is a fair presumption that they ended right there.

Mr. Baker: Yes, sir, that is true.

Judge Sibley: I think it may go in.

Mr. Hart: Now, in view of that, we want to offer a tabulation showing permits to drill wells as exceptions to Rule 37 that have been granted to the Humble Oil & Refining Company up to February 12, 1940.

Judge Sibley: Is there any objection to that?

Mr. Baker: No, sir.

Judge Sibley: How many of those are there?

Mr. Baker: Except we don't think it is material or relevant to any issue we have raised in the case at all.

Judge Sibley: Maybe not.

Mr. Hart: We put this in defensively on account of the issue he raised. Now, we haven't raised the issue, and I don't know why that is pertinent.

Judge Sibley: Well, I don't know whether it will help us any or not, but I will let it go in.

[fol. 649] Mr. Hart: It shows that out of the 2454 wells drilled by the Humble Company on its East Texas leases, 1527 have been drilled under exceptions to Rule 37.

Judge Sibley: Does it contain any recent allowances?

Mr. Hart: I don't think the defendants appear on here.

Judge Sibley: All right.

Mr. Hart: No, they don't. I couldn't get that account without having a search made of the records.

Judge Sibley: Well, what next?

Mr. Hart: The defendants rest, Your Honor.

Judge Sibley: Anything further, Mr. Baker?

Mr. Baker: No, sir.

Judge Sibley: Anything further, Governor Moody?

Mr. Moody: Yes, sir, I would like to ask the Attorney General if we can make a stipulation, subject to its being material, and that is prior to filing—prior to the Rowan & Nichols suit that is reported in the 28th Federal—I don't recall the volume and page of the report with the Circuit Court of Appeals in it, Rowan & Nichols applied for an adjustment of the allowable on its Todd "B" lease, or in the alternative for wells 6 to 25, inclusive, and that the Railroad Commission granted well 6 and refused wells 7 to 25, inclusive, and that while it has not applied for any additional wells on the Todd "A" lease prior to the filing of this suit, it did apply for an adjustment of allowables on this lease, and the Commission has not granted the application, and here is a copy of them, Mr. Hart. Can we make that stipulation?

[fol. 650] Mr. Hart: I think that is wholly immaterial, because there is no showing that they made seven applications on the leases injured in this case.

Judge Sibley: I knew that already. Hasn't somebody proved it already?

Mr. Moody: I don't think we proved it, Your Honor. I think the Court read that somewhere else in another lawsuit.

Mr. Hart: That relates to the lease involved in the other case.

Judge Sibley: Well, I saw they had been granted one and refused the others.

Mr. Hart: That is in another case. On this lease they have seven wells on 28 acres, and they haven't applied for any more, and haven't been refused any more.

Mr. Moody: That is correct. We haven't applied for any on the Todd "A" lease since the seventh well was drilled on it in 1934, and we have offered testimony that this is ample to——

Judge Sibley: Well, he won't stipulate, so that disposes of that.

Mr. Moody: Well, I understand he just objects to it on the ground that it is immaterial.

Judge Sibley: Well, there has been no relief asked for on those wells. It just shows the policy of the Commission. It might have some bearing on their idea of what your rem-

edy is. I will admit it, but frankly, I don't see where it will help you.

Mr. Moody: Yes, sir, but I don't know what its value is in deciding the issues of the case. Now, I would like to [fol. 651] recall Mr. Buck for just four or five questions, and I think that will be all I will have.

Judge Sibley: All right. Now, please don't plow the old furrows, gentlemen.

Mr. Moody: I will try not to, Your Honor. The purpose I have here is to show the effect——

Judge Sibley: Just ask the questions.

Mr. Moody: Very well.

E. O. Buck, having been recalled to the witness stand as a witness on behalf of the plaintiff Rowan & Nichols Oil Company, testified as follows:

Direct examination.

Questions by Mr. Moody:

Q. Mr. Buck, will you explain this instrument marked by the Reporter Rowan & Nichols' Exhibit 29?

A. Rowan & Nichols Exhibit 29 is a to scale cross section of the East Texas field on a line just south of the Rowan & Nichols Todd "B" lease that goes from west to east. It is drawn to a scale of—horizontal scale of one foot to—one inch to 3,000 feet, and a vertical scale of one inch to 40 feet. By planimeter measurement, the volume of the section has been determined, and by making a 3,000 foot subdivision or a one square inch sub-division in the area, the volume has been computed. By producing or assuming equal withdrawal across each section, the production from each section and the loss or gain of each section is shown in the percentages in the cross section.

Q. All right. Do the bottom figures here, minus one per cent west minus 35 per cent, and showing all over here to the east plus 560 per cent, does that show the per cents of [fol. 652] recovery or losses from these several sections under an equal taking of oil clear across the field?

A. It does.

Mr. Hart: May I ask a question for the purpose of an objection?

Mr. Moody: Yes, sir.

Examination by Mr. Hart:

Q. Mr. Buck, when you speak of equal taking, you mean a per well recovery—that is, each well in the field producing the same amount of oil?

A. On that particular cross section, yes, sir.

Q. In other words, there is no distinction between the amount now in a well in the fairway or a well on the east side or a well on the west side?

A. There is none on that cross section.

Mr. Hart: Well, we wish to object to that, because it is not relevant to the order here under attack, and because it assumed a situation that does not exist here at all.

Judge Sibley: How about that, Governor?

Mr. Moody: The purpose of it, Your Honor, is to demonstrate a fact of physics that with the oil being moved forward and up structure by the water, that if you take equal takings clear across the field, that the result of it is not to benefit the man on the west, but to take the oil to replenish the man at the far extreme east so that for the western half of the field, as are shown by that map that had the neutral line through it, as shown by that, that east of that line—west of the line there would be, as the result of taking 20 barrels per well, a loss of oil to those parties, that over to the far east they would produce some four or five times——

[fol. 653] Judge Sibley: That is just so evident that if that happens that that result follows, that there is no use of proving it.

Mr. Moody: That is all right. I wanted to analyze the instrument. That is all I care to offer.

Judge Sibley: Anything further from Mr. Fischer?

Mr. Saye: No, sir.

Judge Sibley: All right. Go ahead with the arguments.

Mr. Baker: First I want to ask, Mr. Hart, if you will stipulate for the record that the original Rule 37 provided for 150 foot spacing from property lines, and 300 foot spacing from other wells.

Mr. Hart: Now, Mr. Baker, I think that is substantially correct, but I would much prefer not to stipulate that; let you just introduce the order; you can get a copy of it and introduce it later if you want to.

Mr. Baker: Very well.

Mr. Hart: I think it is much more satisfactory to have the actual order in without stipulating what it is about.

Mr. Baker: All right, I wish to introduce a certified copy of the Railroad Commission's ten acre spacing order of September 2, 1931, for the East Texas field, and wish particularly to call attention to this finding of fact. "It appearing from the evidence that the spacing of wells in said East Texas field, under the terms and provisions of the Railroad Commission's oil and gas conservation, Rule 37 threatens to cause actual physical waste due to the too rapid dissipation of gas energy in the production of oil and also [fol. 654] due to the too rapid encroachment of water, that in the interest of preventing actual physical waste of oil and gas in said East Texas field, it is desirable to modify said Rule 37 as applied to said field. Therefore, it is here now ordered by the Railroad Commission that said Rule 37, in so far as it applies to the East Texas field, be modified, and the following rule is provided." And then it proceeds to provide for 330 and 660 foot spacing.

(Thereupon, the certified copy of the Railroad Commission's order above referred to was marked as Humble Oil & Refining Company's Exhibit No. 34.)

Mr. Baker: Now, Your Honor, I wish to introduce certified copy of the Railroad Commission's order of March 23, 1936, which contains, among other things, the following: "Whereas, the Railroad Commission's special order fixing allowable production of crude oil in the various fields and districts in Texas, dated August 26, 1935, contains the following language: 'We further find from the evidence the more wells that are drilled, the greater will be the ultimate recovery of oil and gas from any given pool.'

By this language the Commission did not mean and did not find from the evidence that the closer wells are drilled the greater will be the ultimate recovery of oil and gas from any given pool, but by such language only meant and found from the evidence that the more wells that are drilled *in conformity with the spacing rules* as applicable to the various fields in Texas, the greater will be the ultimate recovery of oil and/or gas from any given pool."

(Thereupon, the certified copy of the Railroad Commission's order above referred to was marked as Humble Oil & Refining Company's Exhibit No. 35.)

[fol. 655] Mr. Baker: Now, I wish to introduce a certified copy of the Railroad Commission order of February 24, 1936, containing the same recitals.

(Thereupon, the above order of the Railroad Commission above referred to was marked as Humble's Exhibit No. 36.)

Mr. Baker: May I inquire, Your Honor, how much time will be allowed for argument?

Mr. Saye: Mr. Baker, I want to ask one question. Did you introduce the order explanatory of the order of August 26, 1935—did you also introduce the order of August 25?

Mr. Baker: No, sir, I did not, but this contains excerpts from it.

Mr. Saye: Your Honor, I would like to introduce that in.

Mr. Hart: I have offered that, Mr. Saye.

Mr. Saye: Oh, have you offered that?

Mr. Hart: I intended to.

Judge Sibley: I think you did.

Mr. Hart: I think I did; that is the other I intended to offer.

Mr. Saye: All right.

Close of testimony.

[fol. 656] EXCERPTS FROM TRANSCRIPT OF TESTIMONY AND PROCEEDINGS AT HEARING HELD BY RAILROAD COMMISSION OF TEXAS ON AUGUST 16, 1939—INSERTED HERE AS PER AGREEMENT OF COUNSEL SHOWN ON SIDE FOL. 646 HEREOF

Mr. Baker: Mr. Chairman, may I ask a question before we proceed any further? As I understand you gave two notices——

Chairman Smith: I am going to announce these notices now. The first is Oil & Gas Docket No. 120, #6-829, notice of hearing pertaining to the application of Humble Oil & Refining Company for an increase in allowable on its wells—on its lease and wells in the East Texas Field. That is the application we will hear first.

The second is Docket No. 120, #6-818, under the conservation and prevention of waste of crude petroleum and natural gas in the East Texas Field.

Mr. Baker: Will you please state what was the purpose of that last notice, the last hearing that you called?

Chairman Smith: You mean the one that I read last?

Mr. Baker: Yes, sir.

Chairman Smith: (Reading) "Under and by virture of the authority granted the Railroad Commission of Texas by Article 6049c of the Revised Civil Statutes of the State of Texas and the order of the Railroad Commission relative to the spacing of wells in the East Texas Field of July 13, 1939, it is hereby ordered that notice be and is hereby given to all interested parties in the State of Texas and particularly in the East Texas Oil Field comprizing all oil producing land in Gregg, Smith, Rusk and Upshur Counties, that the Railroad Commission of Texas will at 10 A. M., Wednesday, August 16, 1939, at the Austin Hotel at Austin, Texas, hold a hearing for the purpose of hearing evidence and in order to determine whether or [fol. 657] not waste (as defined in the statutes of this state) of crude oil or natural gas is reasonably imminent or is taking place in the East Texas Oil Field, and for the purpose of hearing evidence and in order to determine whether permits for the drilling of additional wells on the hereinafter described leaseholds in the East Texas Field should be issued or granted by the Commission to prevent waste and or the confiscation of property." And this deals only with the leases that the Humble Oil & Refining Company have in these counties mentioned.

Mr. Madden Hill: Mr. Chairman, I would like to enter an appearance on behalf of a group of East Texas operators.

Mr. Baker: Our application was for an adjustment of the allowable in the East Texas Field. The only purpose of this hearing, as I understand, is to hear evidence on our application. The other hearing, as I understand it, is a hearing called by the Commission on its own initiative in order to determine whether or not it wishes to grant more permits to the Humble Company to drill wells on its leases in the East Texas field.

Chairman Smith: You are correct in your presumption.

Mr. Baker: Yes, sir. Now, with respect to the last; first, I would like to say this, that it is our position that one well will effectively drain more than ten acres in the East Texas Field. That we have drilled our properties to an average of one well to 5-8/10 acres; that we have drilled each and every one of our properties below ten acres—below a ten acre density. That we do not need any more wells on our properties in the East Texas Field in order to

[fol. 658] produce the oil under our leases without waste. That if the Commission will adjust the allowables from our wells in a proper amount, we will be able to recover all of our fair share of the oil from the East Texas fields without the necessity of drilling another well in that field on a single one of our properties. And, therefore, since this is the Commission's hearing on that proposition, we suppose that the Commission will assume and carry forward the burden of proof, and we have no evidence to introduce on that issue at all. We don't want the wells; we don't want the permits, because, as I said, we don't need them, and the only evidence that we expect to introduce on that issue at the present is to show that one well will effectively drain ten acres of land, but I believe it would be in order for the Commission, on that part of the hearing, to put on its own evidence, that is, the burden of proof.

Chairman Smith: The Commission is going to take the position that this first application be heard, Docket No. 6-829, conservation and prevention of waste of crude petroleum and natural gas in the East Texas Field as pertains to the Humble Oil & Refining Company leases.

Mr. Baker: Hearing our motion, is that it?

Chairman Smith: That is the first thing we will do, to hear your motion.

[fol. 659] REPORTERS' CERTIFICATE

We hereby certify that the foregoing 558 pages contain a full, true, and correct transcript of testimony adduced (in question and answer form) as well as proceedings had, upon the trial of cause No. 31 Civil, Humble Oil & Refining Company vs. Railroad Commission of Texas, Et Al., in the United States District Court for the Western District of Texas, January Term, 1940, as same was reported by us and under our supervision; and that the succeeding pages 560 to 666 contain true and correct copies of Plaintiff's Exhibits "A", 7, 8, 8-A, 10, 12, 13, 14, 15, 16, 17, 18, 26, 27, 29, 30, 31, 34, 35, 36, 37 and 38, and Defendants' Exhibits 8, 9, 10, 15, and 16; and that the originals of all other exhibits accompany the record herein.

Witness our hands at Austin, Texas, this 10th day of April, A. D., 1940.

H. P. Bickler, Roy J. McLean, Official Court Reporters.

[fol. 660] PLAINTIFFS' EXHIBIT "A"

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION

Civil Action No. 31

HUMBLE OIL & REFINING COMPANY, Plaintiff

vs.

RAILROAD COMMISSION OF TEXAS ET AL., Defendants

Stipulation No. 1

The parties hereto stipulate as follows:

1. That for a few days after the decree of August 12, 1939, granting to Plaintiff a preliminary injunction in this action, was entered, the Plaintiff produced its wells in the East Texas Field as provided in that decree. The order of the Railroad Commission of Texas of June 19, 1939, and the schedule issued in connection therewith are no longer in effect. The Defendants state in open court that they will never seek to enforce against Plaintiff any fines, penalties or forfeitures, or take any other action against Plaintiff because of its having produced oil from its wells in the East Texas Field to the extent that it was permitted to do so under the terms of said decree.

2. That since the hearing on Plaintiff's Second Motion for Preliminary Injunction, the Defendant, Railroad Com- [fol. 661] mission of Texas, has entered a proration order under date of January 24, 1940, effective for the month of February, 1940, has issued a schedule in connection therewith, and has issued another order shutting down the East Texas Field for twelve (12) days during the month of February, 1940—all of which are substantially the same as the orders of September 11 and 29, 1939, and the schedules issued in connection therewith and the shut-down orders issued on the same dates relating to the East Texas Field, except that the shutdown order does not apply to wells which are classed as marginal wells by the Railroad Commission of Texas. The parties hereto agree that the pleadings heretofore filed in this action shall relate to

said orders and schedules of January 24, 1940 and any and all other orders of substantially the same effect that may be issued by the Railroad Commission of Texas in the future, and that no further pleadings shall be required in order to render such additional orders and schedules subject to the final judgment that may be entered in this action.

Executed at Austin, Texas on this, the 13th day of February, A. D., 1940.

(Signed) Rex G. Baker, Attorney for Plaintiff.
(Signed) James P. Hart, Attorney for Defendants.

(Endorsed): No. 31. Civil Action. In the District Court of the United States for the Western District of Texas, Austin Division, Humble Oil & Refining Company, Plaintiff vs. Railroad Commission of Texas et al., Defendants. Stipulation No. 1. Filed 13th day of February, 1940. Maxey Hart, Clerk. (Signed) By Joe Steiner, Deputy.

[fol. 662] PLAINTIFFS' EXHIBIT No. 7

Tabulation Showing Varying Density to Which East Texas Field is Drilled

(January 1, 1939)

Acres	Wells	Acres Per Well	Average
109	360	.1 to .4	.3
374	523	.5 to .99	.71
2013	1336	1. to 1.9	1.5
5637	2237	2. to 2.9	2.5
30160	7331	3. to 4.9	4.1
57448	9849	5. to 6.9	5.85
37159	4128	7 and above	9.
132900	25764		

Endorsed: No. 31 Civil. Filed 13th day of February, 1940. Maxey Hart, Clerk. Pltffs. Ex. 7.

(Signed) Maxey Hart.

[fol. 663] PLAINTIFFS' EXHIBIT No. 8

RAILROAD COMMISSION OF TEXAS, OIL AND GAS DIVISION

Oil and Gas Docket Nos. 108, 120, 123, 124, 125, 126, 128, 129, 132 and 146

In Re: Conservation and Prevention of Waste of Crude Petroleum and Natural Gas in the State of Texas.

Austin, Texas, September 11, 1939.

Special Order Fixing the Allowable Production of Crude Oil in the East Texas Field for the Months of September and October, 1939, and Amending Rule 23, Division 3, of the Commission's Order of October 17, 1933, Pertaining to the East Texas Field

Whereas, The Railroad Commission of Texas, after due notice and hearing on October 17, 1933, promulgated a general order pertaining to the conservation and regulation of crude oil and natural gas for the State of Texas, which included Rule 23 of Division 3, pertaining to the East Texas Field, which provided in part that each oil well in the East Texas Field should be allowed to produce daily a certain maximum percentage of its hourly potential capacity as determined by the Commission, and

Whereas, The Commission through subsequent amendments to Rule 23, of Division 3, of the Order of October 17, 1933, has continued to distribute the allowable for the East Texas Field between producing wells on the basis set forth in said Rule, and

Whereas, The method of allocation of the allowable production of the East Texas Field has been recently attacked in the Courts and the Commission has been restrained from enforcing the provisions of said Rule as it applies to certain properties in the East Texas Field, and

Whereas, The Commission finds that it is necessary to revise the method of allocation and distribution of the [fol. 664] allowable oil in the East Texas Field as has been enforced and applied and to amend Rule 23 of Division 3 of the Order of October 17, 1933, in order to conform to certain standards of distribution of the allowable crude oil production between the wells in the East Texas Field as indicated as being necessary by the Courts, and

Whereas, The Commission, after due notice, held a hearing in Austin, Texas, called for August 16, 1939, relating to the conservation of crude oil and natural gas in the East Texas Field and the prevention of waste thereof, at which hearing the Commission heard extensive testimony on the proper factors which should be included in an equitable distribution of the allowable production between the producing wells in the East Texas Field and regulations necessary for the prevention of waste in said Field, and

Whereas, The Commission finds from the evidence submitted at its hearings that in order for each producing well to be allowed to produce its fair share of the allowable oil from the East Texas Field, that the method of allocation and distribution of the field's allowable between producing wells in this field should, in order to prevent waste, incorporate a minimum well allowable, the potential capacity of the wells on each lease, the number of acre feet of oil saturated sand underlying the wells on each tract and the bottom-hole pressure of the wells located on each tract, and

Whereas, The Commission finds from evidence submitted to it at numerous hearings, including the hearing of August 16, 1939, that the reservoir of the East Texas Field has its energy principally supplied by a hydrostatic drive which [fol. 665] encroaches from the west to the east and that only a certain amount of crude oil can be withdrawn daily from the East Texas Field in order to utilize effectively the energy necessary to recover the greatest amount of oil ultimately from the reservoir, and

Whereas, The Commission finds that in order to prevent waste in said field that the allowable production during the months of September and October, 1939, should not average more than 490,000 barrels per day over a thirty (30) day period, and that not more than 690,000 barrels of crude oil should be produced from the East Texas Field in any one day during the months of September and October, 1939, and

Whereas, The Commission finds that there exists a market demand for crude oil produced in such an amount in the East Texas Field during the months of September and October, 1939:

It is therefore ordered That Rule 23, of Division 3, of the Commission's Order of October 17, 1933, pertaining to the East Texas Field be and it is hereby amended to read, effective September 14, 1939, as follows:

"Rule 23. (a) Not more than 690,000 barrels of crude oil shall be produced from the East Texas Field during any day of the effective period of this Order.

"(b) The total daily allowable for the field shall be distributed among the producing wells in the field on the following basis:

1. Each well capable of producing twenty (20) barrels of crude oil per day shall be allowed to produce twenty [fol. 666] (20) barrels per day.

2. Each well incapable of producing twenty (20) barrels per day shall be allowed to produce daily that amount of oil which it is capable of producing in a 24-hour period, not in excess of twenty (20) barrels.

3. In addition to the twenty (20) barrels provided for in one (1) above, each well in the field which is capable of producing in excess of twenty (20) barrels daily shall be allowed to produce daily that proportion of the total daily allowable for the field remaining after deductions for one (1) and two (2) above have been made, that the product of such well's hourly potential by its bottom-hole pressure by the thickness of the saturated Woodbine Sand underlying the well by the average number of acres per well in the lease bears to the sum of such products for all of the wells in the field."

It is further ordered by the Railroad Commission that the owner of any oil and/or gas leasehold estate in the East Texas Oil Field shall have the right to present evidence to the Commission and be heard thereon on the question of the amount of acreage owned, the potential of his well or wells thereon, or the bottom-hole pressure or pressures of any well or wells on said leasehold estate, or the number of feet of saturated oil sand underlying any of said leases.

It is further ordered That this Cause be held open on the Docket for such other and further orders as may be necessary and supported by evidence of record.

Railroad Commission of Texas. Lon A. Smith, Chairman. Jerry Sadler, Commissioner. Attest: C. F. Petet, Secretary. (Seal.)

[fol. 667] I, C. F. Petet, Secretary of the Railroad Commission of Texas, do hereby certify that the attached instrument, being a mimeographed copy of the Commission's Order entitled "Special Order Fixing the Allowable Production of Crude Oil in the East Texas Field for the Months of September and October, 1939, and Amending Rule 23, Division 3, of the Commission's Order of October 17, 1933, Pertaining to the East Texas Field," dated September 11, 1939, is a true and correct copy of the original now on file in these offices and in my custody as Secretary of said Commission.

Witness my hand and the seal of the Railroad Commission of Texas this the 11th day of October, 1939.

(Signed) C. F. Petet, Secretary of the Railroad Commission of Texas. (Seal.)

[fol. 668] PLAINTIFFS' EXHIBIT No. 8-A

Railroad Commission of Texas
Oil and Gas Division

Oil and Gas Docket Nos. 108, 120, 123, 124, 125, 126, 128, 129, 132 and 146.

In Re: Conservation and Prevention of Waste of Crude Petroleum and Natural Gas in the State of Texas.

20-908

Austin, Texas, September 29, 1939.

Special Order Fixing the Allowable Production of Crude Oil in the Various Fields and Districts in Texas

Whereas, After due notice, hearings have been held in Austin, Texas, at various times, including the hearing on September 11, 1939, with respect to the existence and imminence of waste of oil and gas in the state of Texas, and the prevention thereof; and

Whereas, In view of the evidence, including among other matters the physical conditions in the various fields, the transportation and marketing facilities, the reasonable market demand, the reasonableness of the allocation as between fields of the allowable production under previous orders; and

Whereas, The Railroad Commission of Texas finds from the evidence that the reasonable market demand for oil produced in this State from the various fields and districts

therein equals the amount hereinafter shown as the allowable production thereof during the period beginning 7 o'clock a. m., October 1, 1939, until 7 o'clock a. m., November 1, 1939; and

Whereas, The Railroad Commission of Texas finds that waste exists and is imminent and that to prevent such waste of oil and gas as the same is defined by the appli- [fol. 669] cable Statutes, it is necessary to restrict the production of oil in the state of Texas to the reasonable market demand;

Therefore, It is Ordered That beginning at 7 o'clock a. m., October 1, 1939, and until 7 o'clock a. m., November 1, 1939, the production of oil in the state of Texas and the various fields shown, shall be as hereinafter shown Except as provided for in the Commission's Order of September 29, 1939, entitled "General Order Shutting Down All Oil Wells in the Various Fields and Districts in the State of Texas."

Rule 2 of Division 2, as contained in an Order of this Commission dated October 17, 1933, pertaining to the Panhandle District of Texas is hereby readopted and amended as follows:

Rule 2. Not more than Eighty Eight Thousand Two Hundred and Forty-One (88,241) barrels of crude oil shall be produced from said district during any day of the effective period of this Order. Moore County shall not produce in excess of One Thousand Seven Hundred Twenty One (1,721) barrels of oil daily. Moore County allowable is in addition to Panhandle allowable. The Osborne Area in Wheeler County shall not produce in excess of Six Hundred Eleven (611) barrels daily. The Osborne Area allowable is in addition to the Panhandle allowable.

Rule 23 of Division 3, as contained in an Order of the Commission dated October 17, 1933, pertaining to the East Texas Field as amended by an Order of the Commission dated September 11, 1939, is hereby readopted and amended as follows:

Whereas, the Commission finds that in order to prevent waste in said field that the allowable production during the [fol. 670] month of October, 1939, should not average more than 490,000 barrels per day over the thirty-one (31) day period, and that no more than 690,000 barrels of crude oil should be produced from the East Texas Field in any one day during the month of October, 1939, and

Whereas, The Commission finds that there exists a market demand for crude oil produced in such an amount in the East Texas Field during the month of October, 1939:

It is Therefore Ordered That Rule 23, of Division 3, of the Commission's Order of October 17, 1933, pertaining to the East Texas Field be and it is hereby amended to read, effective October 1, 1939, as follows:

"Rule 23. (a) Not more than 690,000 barrels of crude oil shall be produced from the East Texas Field during any day of the effective period of this Order.

(b) The total daily allowable for the field shall be distributed among the producing wells in the field on the following basis:

1. Each well capable of producing twenty (20) barrels of crude oil per day shall be allowed to produce twenty (20) barrels per day.

2. Each well incapable of producing twenty (20) barrels per day shall be allowed to produce daily that amount of oil which it is capable of producing in a 24-hour period, not in excess of twenty (20) barrels.

3. In addition to the twenty (20) barrels provided for in one (1) above, each well in the field which is capable of [fol. 671] producing in excess of twenty (20) barrels daily shall be allowed to produce daily that proportion of the total daily allowable for the field remaining after deductions for one (1) and two (2) above have been made, that the product of such well's hourly potential by its bottom-hole pressure by the thickness of the saturated Woodbine Sand underlying the well by the average number of acres per well in the lease bears to the sum of such products for all of the wells in the field."

3. Rule 2 of Division 5, as contained in an Order of this Commission dated October 17, 1933, pertaining to the North Texas District is hereby readopted and amended as follows:

Rule 2. Not more than one hundred twenty-eight thousand five hundred and fifty six (128,556) barrels of crude oil shall be produced from said district during any day of the effective period of this Order.

4. Rule 2 of Division 6, as contained in an Order of this Commission dated October 17, 1933, pertaining to the West

Central Texas District is hereby readopted and amended as follows:

Rule 2. Not more than sixty-four thousand eight hundred and ninety (64,890) barrels of crude oil shall be produced from said district during any day of the effective period of this Order, which is distributed in the following manner:

District #7-B:

Brown County	1981	Akard Field	87
Callahan County	1339	Ivy Field	2436
Scranton Pool	81	Stephens County	4124
Haskett County	93	Loving Field	45
Jones County	6190		

[fol. 672] District #7-B—Continued:

Coleman County	1209	Palo Pinto County	481
Novice Field	165	Shackelford County	5958
Comanche County	381	Stribling Field	98
Eastland County	2832	Stonewall County	
Erath County	77	Boyd Field	50
Fisher County	3452	Carlisle Field	100
Appling Field	116	Taylor County	129
Avoca Field	2160	Bowles	108
Griffin Field	2627	Throckmorton County	427
Hawley Field	604		

District #7-C:

Crockett County:		Runnels County:	
Crockett Pool	596	Beddo Field	35
Simpson Pool	21	McMillan Field	87
World Pool	1058	Upton County:	
Irion County	28	Herrington Extension	86
McCulloch County	1	Hurdle Field	121
Opp	50	McCamey Field	18729
Page	60	Webb Ray Field	37
Reagan County:			
Big Lake Field	6480		
Grayson	151		

Rule 4 of Division 7, as contained in an Order of the Commission dated October 17, 1933, pertaining to the West Texas District is hereby readopted and amended as follows:

Rule 4. Not more than Three Hundred One Thousand Five Hundred Thirty Two (301,532) barrels of crude oil

per day shall be produced from said district during any day of the effective period of this Order, which shall be distributed to the various fields therein as follows:

Anthony	28	Mason	457
Apco	100	Masterson	386
Bennett	5426	McClintic	1731
Carter	36	Means	3876
Church Fields	7097	Monroe	50
Cowden, Crane	1470	Moore	67
Cowden, North	14937	Netterville	224
Cowden, No. Deep	50	Northwest	435
Cowden, South	317	Parker	33
Dean	120	Payton	6383
Deep Rock	264	Pecos Valley (High Gravity)	1568
Dobbs	9	Pecos Valley (Low Gravity)	674
Duggan	1752	Penwell	5802
Dune	779	Richards	20
Eaves	293	Sand Hills (Permian)	1689
Edwards	10	Sand Hills (Ordovician)	277
Emma	1261	Scarborough	2128
Emperor	2173	Seminole	602
[fol. 673] Estes	10029	Shearer	1575
Foster	12685	Shipley	1788
Fromme	110	Slaughter	5936
Fuhrman	2045	Snyder	2755
Garza	15	Taylor-Link	1640
Goldsmith	35781	Tobarg	1905
Gulf-McElroy	7394	Waddell	2310
Halley	534	Ward, North	8685
Harper	6445	Ward, South	8486
Henderson	3400	Wasson	23904
Hendrick	9890	West	37
Howard-Glasscock	16460	Westbrook	951
Iatan E-Howard	5915	Wheat	1597
Johnson	108	White-Baker	158
Jordan	4562	Yates	35303
Kermit	19009	Yates (Smith Sand)	150
Keystone (Colby)	3631	Waples-Platter	50
Keystone (Lime)	2714		
Leck	309		
Lehn	41		
Magnolia Sealy	701		

6. Rule 2 of Division 4, as contained in an Order of this Commission dated October 17, 1933, pertaining to the East Central Texas District is hereby readopted and amended as follows:

Rule 2. Not more than One Hundred Twenty Two Thousand Four Hundred and Thirty Five (122,435) barrels of crude oil per day shall be produced from said district during any day of the effective period of this Order. Said amounts shall be allocated to the various fields in the following amounts:

District #5:

Bazette	50	Pottsboro	5
Bolivar	13	Powell	1922
Buffalo	50	Rice	3
Collinsville	22	Richland	15
Corsicana Shallow	401	Rowe and Baker	140
Currie	112	Sulphur Bluff	5183
Flag Lake	625	South Bosque	24
Lott	17	Van	23732
Mexia	1726	Van Shallow	117
Negro Creek	3	Wortham	77
Opelika	22	Wortham Shalloe	8

District #6:

Boggy Creek	359	Navarro Crossing	840
Cayuga	17133	Nacogdoches	14
Cayuga Trinity	18	Panola	29
Ginter	37	Potter	105
Grapeland	86	Percilla	15
Huntington	6	Rodessa	29515
Long Lake	3337	Talco	35813
Lone Star	54	Trinity	671
Marion Shallow	40	Waskom	96

[fol. 674] 7. Rule 2 of Section "A" of Division 8, as contained in an Order of this Commission dated October 17, 1933, pertaining to the Southwest Texas District is hereby readopted and amended as follows:

Rule 2. Not more than Three Hundred Eighteen Thousand Seven Hundred Ninety Eight (318,798) barrels of crude oil shall be produced in said district during any day

of the effective period of this order and same shall be distributed as follows:

Division I

Alta Vista	32	Kimbro	10
Bateman	117	Larremore	112
—New Berlin	4	Loma Alto	54
Bob Rose	4	Luling Branyon	10460
Burdette Wells	4	Lytton Springs	357
Buchanan	184	Manford	27
Calliham	226	Matthews	25
Carroll	14	Minerva Rockdale	184
Carver-Kallison	15	Munson	246
Cedar Creek	50	Noack	93
Cedar Creek No.	8	Pearsall	673
Chapman Abbott	266	Philtop	4
Chicon Lake	27	Red Rock	100
Clark	194	Riddle	93
Dale	331	Salt Flat	6466
Dale West	103	Salt Flat No.	75
Darst Creek	10715	Somerset	609
Deupree	22	Southton	61
Dunlap	154	Spiller	12
Dunlay	1	Staples	1
Eckert	111	Taylor Ina	34
Ellison Young	76	Thrall	30
Espada Mission	1	Von Ormy	170
Ezzell	3606	Walnut Creek	34
Fairfield	13	Yoast	37
Gas Ridge	8	Zoboroski	97
Hilbig	396		
Jacobs	553		37300
Jones	1		

Division II

Burnell, South	800	Greta Deep	313
Caesar	208	Greta	6934
Coleto Creek	421	[fol. 675] Heyser	13194
Cordeil	3960	Holzmark	27
Diamond Half	250	Hordes Creek	30
Dinero	18	Keeran	925
Dirks	2241	La Rosa	4752
Francitas	300	Mauritz	150
Ganado	39	McFaddin	2997

McMurray	4
McNeil	66
Mellon Creek	387
Mt. Lucas	48
Mission River	517
Normanna	51
O'Connor McFaddin	120
Oakville	462
Pettus	717
Pettus, New	903
Placedo	7851
Placedo, East	426
Plummer	298
Ray	250
Sarco	3
Slick	9
New Refugio	3812
Refugio Fox	814
Old Refugio	1362
Tom O'Connor	16266
Telfner, East	21
Tuleta	215
Tulsita	17
Voss	10
White Creek	165
West Ranch	1406
	73759

Division IV

Adami	25
Agua Dulce	193
Albercas	50
Alfred	272
Alta Verde	6
Alice	3335
Alta Mesa	541
Angelita	11
Aransas	13085
Aviators	350
Baldwin	487
Barbacoas	7
Benavides	9389
Ben Bolt	561
Bird Island	0
Blanchard	65
Bruni	545
Camada	18
Captain Lucey	141
Carolina-Texas	7
Casa Blanco	576
No. Casa Blanca	140
Cedro Hill	340
Charco Redondo	19
Charamousca	423
Chiltipin	31
Clara Driscoll	2596
Clara Driscoll So.	1408
Clark-Muil	80
Cole West	515
Colorado	497
Colmena	331
Conoco Driscoll	2187
Comitas	976
Corpus Christi	1717
Cuellar	115
Driscoll Ranch	64
Eagle Hill	933
East Bruni	220
El Tanque	419
Escobas	1457
Fitzsimmons	3400
Flour Bluff	4942
Govt. Wells No.	8146
Govt. Wells So.	3910
Guerra	583
Henne-Winch-Farris	9
Hoffman	6124
Jennings	1176
Kingsville	62
Kohler	82
Kohler Deep	33
Kelsey	2035
Killam	701
Killam North	222
Labbe	265

Laurel	17	Reynolds	870
Las Animas	80	Rio Grande City	103
Loma Novia	12658	Roma	6
Loma Vista	7	Ricaby	150
London	43	Richard King	1289
Longhorn	1600	Rincon	60
Los Olmos	118	Riverside	176
Lopez	6697	Robstown	88
Luby	10177	Sandia	11
Luby North	77	Sam Fordyce No.	237
Lundell	898	Sam Fordyce	3641
Magnolia City	60	Sarnosa	632
Mathis, East	50	Saxet	14897
Midway	790	Saxet Frio	13101
Minnie Bock	633	Seven Sisters	8337
Miranda City	398	Seven Sisters So.	1081
Mirando Valley	1210	Sinton	9
Moca	370	Southland	58
Nelson	2	Sullivan	35
O'Hern	5888	Sweden	108
Oilton	1295	Sullivan City	133
Peters	88	Sun	675
Piedre Lumbre	1986	Taft	4597
Plymouth	16772	Tesoro	290
Piedras Pintas	40	Tom Graham	1894
Premont	461	Turkey Creek	5193
Premont East	185	Volpe	140
Rancho Solo	414	White Point	102
Rancho Solo Ext.	335	East White Point	10369
Randado	286		
			207739

[fol. 676] 8. Rule 2 of Section A, Division 9, as contained in an Order of the Commission dated October 17, 1933, pertaining to the Gulf Coast District is hereby readopted and amended as follows:

Rule 2. Not more than two hundred and ninety eight thousand nine hundred twenty-eight (298,928) barrels of crude oil shall be produced from said district during any day of the effective period of this Order, which shall be distributed as follows:

Aldine	100	Hamman	2785
Allen Dome	5	Hankamer Old	1104
Amelia	3424	Hankamer New	212
Anahuac	10235	Hardin	8660
Ariola	310	Hastings	28510
Armour	312	High Island	2338
Barbers Hill	9065	Hilje	33
Batson, New	1574	Hitchcock	1145
Bammel	100	Hull Old	2072
Batson Old	693	Hull New	4286
Bay City	3710	Houston, No.	300
Beaumont, West	4039	" So.	3688
Big Creek	645	Humble	3742
Blue Ridge	899	Joe's Lake	1620
Boling	1695	Kubela	1079
Brenham	27	Livingston	2069
Brookshire	3	Labelle	70
Buckeye	182	League City	1786
Buttermilk Slough	25	Lochridge	2405
Caplen	300	Lost Lake	120
Cedar Point	1037	Louise	1926
China (South)	100	Lovell's Lake	1163
Chriesman	20	Magnet	1519
Clam Lake	198	Manvel Miocene	4713
Clay Creek	662	" Oligocene	4793
Clear Lake	727	Markham	2370
Cleveland	388	Markham North	88
Clinton	345	Martha	200
Cotton Lake	472	Mykawa	146
" " So.	1833	" New	1033
Conroe	37373	Nome	1393
Damon Mound	303	North Dayton	85
Danbury Dome	640	Old Ocean	10412
[fol. 677] Dickinson	5047	Orchard	350
Esperson Dome	1275	Orange	558
" " So.	1000	Orange West	2890
Eureka Heights	3928	Palacios	61
" " Deep	30	Pickett Ridge	1418
Fairbanks	10401	Pierce Junction	3648
Fannett	453	Port Neches	940
Garwood	23	" " West	410
Gillock	6411	Raccoon Bend	1598
Goose Creek	1964	Raccoon Bend (Cockfield	2389
Greens Lake	46		

Rosslyn	40	Thompson	21330
Saratoga	1242	" North	1240
Sandy Point	69	Tomball	10146
Satsuma	406	Turtle Bay	1381
Schwab	58	" " (Lotz-	
Schwab-Wilcox	300	Sand)	96
Seabreeze	306	Webster	9594
Segno	1759	West Columbia	2115
Segno Deep	2053	West Columbia New	4851
Silsbee	1962	" " Vicks.	25
Sour Lake	1512	Withers	5699
South Liberty	500	Willow Slough	470
Spindletop	2934	Wilson Creek	100
Sugar'and	4534		

It is Further Ordered That allowable oil in the foregoing Order is measured on 100 per cent tank tables according to the Pipe Line Rule Number Nine (9), and corrected to sixty (60) degrees Fahrenheit.

It is Further Ordered That this Cause be held open on the Docket for such further orders as may be necessary and supported by evidence of record in the above Cause.

Railroad Commission of Texas, Lon A. Smith, Chairman, Jerry Sadler, Commissioner. (Seal.)

Attest: C. F. Petet, Secretary.

I, C. F. Petet, Secretary of the Railroad Commission of Texas, do hereby certify that the attached instrument, being a mimeographed copy of the Commission's Order entitled "Special Order Fixing Allowable Production of Crude Oil in the Various Fields and Districts in Texas" dated September 29, 1939, is a true and correct copy of the original now on file in these offices and in my custody as Secretary of said Commission.

[fol. 678] Witness my hand and the seal of the Railroad Commission of Texas this the 11th day of October, 1939.

(Signed) C. F. Petet, Secretary of the Railroad Commission of Texas. (Seal.)

[fol. 679] PLAINTIFFS' EXHIBIT No. 10

Railroad Commission of Texas

Oil and Gas Division

Oil and Gas Docket Nos. 108, 120, 123, 124, 125, 126, 128, 129, 132 and 146

#20-1237

In Re: Conservation and Prevention of Waste of Crude Petroleum and Natural Gas in the State of Texas

Austin, Texas, January 24, 1940.

SPECIAL ORDER FIXING THE ALLOWABLE PRODUCTION OF CRUDE OIL IN THE VARIOUS FIELDS AND DISTRICTS IN TEXAS

Whereas, After due Notice, hearings have been held in Austin, Texas, at various times, including the hearing on January 18, 1940, with respect to the existence and imminence of waste of oil and gas in the State of Texas, and the prevention thereof; and

Whereas, In view of the evidence, including among other matters the physical conditions in the various fields, the transportation and marketing facilities, the reasonable market demand, the reasonableness of the allocation as between fields of the allowable production under previous orders; and

Whereas, The Railroad Commission of Texas finds from the evidence that the reasonable market demand for oil produced in this State from the various fields and districts therein equals the amount hereinafter shown as the allowable production thereof during the period beginning 7 a. m., February 1, 1940, until 7 a. m., March 1, 1940, and

Whereas, The Railroad Commission of Texas finds that waste exists and is imminent and that to prevent such waste of oil and gas as the same is defined by the applicable Statutes, it is necessary to restrict the production of oil in the [fol. 680] State of Texas to the reasonable market demand:

Therefore it is Ordered That beginning at 7 a. m., February 1, 1940, and until 7 a. m., March 1, 1940, the production of oil in the State of Texas and the various fields shown, shall be as hereinafter shown Except as provided for in

the Commission's Order of January 24, 1940, entitled, "Special Order Shutting Down the East Texas Field Covering Rusk, Smith, Gregg, Cherokee and Upshur Counties, Texas."

Rule 2 of Division 2, as contained in an Order of this Commission dated October 17, 1933, pertaining to the Panhandle District of Texas is hereby readopted and amended as follows:

Rule 2. Not more than Seventy Eight Thousand Four Hundred Fifty One (78,451) barrels of crude oil shall be produced from said District during any day of the effective period of this Order. Moore County shall not produce in excess of One Thousand (1,000) barrels of oil daily. Moore County allowable is in addition to Panhandle allowable. The Osborne Area in Wheeler County shall not produce in excess of Five Hundred Eighty (580) barrels daily. The Osborne Area allowable is in addition to the Panhandle allowable.

Rule 23 of Division 3, as contained in an Order of the Commission dated October 17, 1933, pertaining to the *q* East Texas Field as amended by an Order of the Commission dated September 11, 1939, is hereby readopted and amended as follows:

Whereas, The Commission finds that in order to prevent waste in said field that the allowable production during the month of February, 1940, should not average more than 410,000 barrels per day over the thirty (30) day period, and that no more than 690,000 barrels of crude oil should be produced from the East Texas Field in any one day during the month of February, 1940, and

[fol. 681] Whereas, The Commission finds that there exists a market demand for crude oil produced in such an amount in the East Texas Field during the month of February, 1940,

It is Therefore Ordered That Rule 23, of Division 3, of the Commission's Order of October 17, 1933, pertaining to the East Texas Field be and it is hereby amended to read, effective February 1, 1940, as follows:

"Rule 23. (a) Not more than 690,000 barrels of crude oil shall be produced from the East Texas Field during any day of the effective period of this Order.

(b) The total daily allowable for the field shall be distributed among the producing wells in the field on the following basis:

1. Each well capable of producing twenty (20) barrels of crude oil per day shall be allowed to produce twenty (20) barrels per day.

2. Each well incapable of producing twenty (20) barrels per day shall be allowed to produce that amount of oil which it is capable of producing in a 24-hour period, not in excess of twenty (20) barrels.

3. In addition to the twenty (20) barrels provided for in one (1) above, each well in the field which is capable of producing in excess of twenty (20) barrels daily shall be allowed to produce daily that proportion of the total daily allowable for the field remaining after deductions for one (1) and two (2) above have been made, that the product of such well's hourly potential by its bottomhole pressure by the thickness of the saturated Woodbine Sand underlying the well by the average number of acres per well in the lease bears to the sum of such products for all of the wells in the field."

[fol. 682] 3. Rule 2 of Division 5, as contained in an Order of this Commission dated October 17, 1933, pertaining to the North Texas District is hereby readopted and amended as follows:

Rule 2. Not more than One Hundred Twenty Four Thousand Two Hundred Thirty Five (124,235) barrels of crude oil shall be produced from said District during any day of the effective period of this Order.

4. Rule 2 of Division 6, as contained in an Order of the Commission dated October 17, 1933, pertaining to the West Central Texas District is hereby readopted and amended as follows:

Rule 2. Not more than Fifty Six Thousand One Hundred Sixty One (56,161) barrels of crude oil shall be produced from said District during any day of the effective period of this Order, which is distributed in the following manner:

District #7-B:

Akard Field	75	Avoca Field	1478
Amity Field	523	Bowles	220
Appling Field	186	Boyd Field	50

Brown County	1825	Jones County	5412
Callahan	1258	Loving Field	45
Carlile Field	100	Nolan County	
Coleman County	1270	Novice Field	192
Comanche County	120	Palo Pinto Co.	500
Eastland County	2654	Scranton	102
Erath County	70	Shackleford Co.	5715
Fisher County	2965	Stephens Co.	4281
Griffin Field	1671	Stribling Field	142
Haskell County	93	Stonewall Co.	
Hawley Field	504	Taylor County	134
Hose Field	40	Throckmorton Co.	408
Ivy Field	1772		

District #7-C:

Beddo	68	McCamey	13861
Big Lake	6320	McMillan	77
Bolt	15	Opp	41
Crockett	400	Page	60
Grayson	151	Simpson	21
Harrington	44	Webb Ray	37
Hurdle	106	World	1107
Irion	28	Wyatt	20

Rule 4 of Division 7, as contained in an Order of the Commission dated October 17, 1933, pertaining to the West Texas District is hereby readopted and amended as follows:

[fol. 683] Rule 4. Not more than one hundred ninety six thousand six hundred fifty six (196,656) barrels of crude oil per day shall be produced from said district during any day of the effective period of this Order, which shall be distributed to the various fields therein as follows:

Anthony	28	Deep Rock	189
Apco	120	Dobbs	9
Carter	40	Duggan	474
Cedar Lake	96	Edwards	10
Church Fields	4800	Eaves	238
Cowden, North	9680	Emma	625
Cowden, N. Deep	83	Emperor	1684
Cowden, South	367	Estes	6134
Cowden, Crane	1631	Foster	9625
Dune	409	Fromme	87
Dean	116	Fuhrman	1314

Goldsmith	18715	Gravity)	989
Graza	15	Pecos Valley (Low Gravity)	404
Gulf-McElroy	2250	Penwell	3375
Halley	310	Richards	5
Harper	3822	Sand Hills (Permian)	1537
Henderson	2740	Sand Hills (Ordovician)	232
Hendrick	9688	Scarborough	2072
Howard-Glasscock	16474	Seminole	765
Iatan E-Howard	6248	Shearer	760
Johnson	168	Shipley	1717
Jordan	2627	Slaughter	1613
Kermit	10710	Snyder	2275
Keystone (Colby)	2350	Taylor-Link	2143
Keystone (Lime)	1624	Tobarg	1947
Leck	703	Waddell	1100
Lehn	280	Waples-Platter	50
Magnolia Sealy	528	Ward, North	6182
Mason	290	Ward, South	5185
Masterson	224	Wasson	18720
Means	2450	West	37
McClintic	1018	Westbrook	951
Monroe	24	Wheat	999
Moore	80	White-Baker	206
Netterville	223	Yates	18576
Northwest	613	Yates (Smith Sand)	150
Parker	33		
Payton	2700		
Pecos Valley (High			

6. Rule 2 of Division 4, as contained in an Order of this Commission dated October 17, 1933, pertaining to the East Central Texas District is hereby readopted and amended as follows:

Rule 2. Not more than eighty thousand and fifteen (80,015) barrels of crude oil per day shall be produced from said District during any day of the effective period of this Order. Said amounts shall be allocated to the various fields in the following amounts:

[fol. 684] District No. 5:

Bazette	108	Collinsville	39
Bolivar	32	Corsicana Shallow	415
Buffalo	50	Currie	112

Flag Lake	359	Richland	17
Lott	17	Rowe & Baker	44
Mexia	1721	South Bosque	21
Negro Creek	3	Sulphur Bluff	2540
Opelika	22	Van	13750
Pottsboro	5	Van Shallow	125
Powell	1954	Wortham	98
Rice	3	Wortham Shallow	7

District No. 6:

Boggy Creek	400	Panola Co. (Bethany)	29
Cayuga	7750	Percilla	15
Cayuga Trinity	18	Potter	144
Ginter	37	Redland	8
Grapeland	100	Rodessa	24671
Huntington	6	Rodessa Hill	212
Lone Star	55	Shelbyville	20
Long Lake	2105	Talco	21627
Marion Shallow	187	Trinity	390
Navarro Crossing	689	Waskom	96
Nacogdoches	14		

7. Rule 2 of Section "A" of Division 8, as contained in an Order of this Commission dated October 17, 1933, pertaining to the Southwest Texas District is hereby readopted and amended as follows:

Rule 2. Not more than Two Hundred Twenty Three Thousand and Four Hundred (223,400) barrels of crude oil shall be produced in said district during any day of the effective period of this order and same shall be distributed as follows:

Division I:

Alta Vista	12	Cedar Creek No.	30
Bateman	122	Chapman Abbott	267
Black Hills	6	Chicon Lake	49
Bob Rose	4	Clark	149
Buchanan	195	Dale	281
Burdette Wells	4	Dale West	103
Calliham	275	Darst Creek	6705
Carroll	25	[fol. 685] Deupree	3
Carver-Kallison	10	Dunlap	75
Cedar Creek	50	Dunlay	1

Eckert	115	Munson	114
Ellison Young	107	Noack	118
Espada Mission	1	Pearsall	421
Ezzell	1433	Philtop	19
Fairfield	6	Riddle	31
Gas Ridge	11	Red Rock	40
Hilbig	244	Salt Flat	4901
Jacobs	613	Salt Flat No.	75
Kimbro	16	Somerset	591
Larremore	63	Southton	79
La Vernia	15	Spiller	19
Loma Alto	51	Taylor Ina	26
Luling Branyon	6257	Thrall	56
Lytton Springs	481	Von Ormy	197
Manford	20	Walnut Creek	18
Matthews	35	Yoast	37
Minerva Rockdale	212	Zoboroski	88

Division II:

Burnell, South	645	Mission River	528
Cordeil	2520	Normanna	51
Caesar	230	O'Connor McFaddin	80
Coleto Creek	380	Oakville	470
Diamond Half	234	Pettus	577
Dinero	23	Pettus, New	852
Dirks	1627	Placedo	5210
Francitas	292	Placedo, East	385
Ganado	58	Plummer	274
Greta Deep	225	Ray	220
Greta	4000	New Refugio	3630
Heyser	7784	Refugio Fox	472
Holzmark	47	Old Refugio	1110
Hordes Creek	25	Sarco	3
Keeran	692	Slick	12
La Rosa	3300	Tom O'Connor	19488
Mauritz	174	Telfner, East	10
McFaddin	1880	Tuleta	230
McMurray	8	Tulsita	18
McNeil	66	Voss	15
Mellon Creek	303	White Creek	140
Mt. Lucas	53	West Ranch	1862

Division IV:

Adami	262	Flour Bluff	4160
Agua Dulce	112	Govt. Wells No.	7715
Albercas	60	Govt. Wells S.	3698
Alfred	180	Guerra	280
Alta Verde	6	Henne-Winch-Farris	5
Alice	1840	Hoffman	3470
Alta Mesa	440	Holland-Hebbronville	26
Angelita	6	Jennings	961
Aransas	9280	Kelsey	1698
Aviators	453	Kingsville	47
Baldwin	283	Killam	409
Barbacoas	7	Killam North	129
Benavides	6130	Kohler	47
Ben Bolt	960	Kohler Deep	19
Bird Island	46	Loma Novia	11483
Blanchard	58	Loma Vista	4
Bruni	316	London	41
Camada	11	Longhorn	1400
Captain Lucey	109	Labbe	165
Caroline-Texas	8	La Gloria	51
Casa Blanco	309	Las Animas	29
N. Casa Blanca	90	Laurel	10
Cedro Hill	220	Los Olmos	69
Charco Redondo	17	Lopez	3922
Charamousca	423	Luby	5350
Chiltipin	79	Luby North	69
Clark-Muil	80	Lundell	606
Cole West	394	Magnolia City	101
Colorado	630	Mathis, East	29
Colmena	207	Midway	550
Clara Driscoll	1470	Minnie Bock	803
Clara Driscoll S.	1000	Mirando City	455
Conoco Driscoll	1143	Mirando Valley	618
Comitas	611	Moca	135
Corpus Christi	965	O'Hern	4387
Cuellar	67	Oilton	1049
Driscoll Ranch	37	Peters	51
Eagle Hill	508	Peters, East	20
East Bruni	195	Piedre Lumbre	1301
El Tanque	132	Plymouth	7128
Escobas	1035	Piedras Pintas	12
Fitzsimmons	2722		

Premont	354	Sexet Frio	7103
Premont East	435	Seven Sisters	5120
Rancho Solo	282	Seven Sisters S	615
Rancho Solo Ext.	225	Sinton	6
Randado	247	Southland	101
Reynolds	1232	Sullivan	20
Ricaby	128	Sullivan City	77
[fol. 686]		Sun	543
Richard King	987	Sweden	62
Rinson	70	Taft	1950
Rio Grande City	71	Tarancahuas	13
Riverside	102	Tom Graham	1230
Robstown	51	Tesoro	169
Roma	6	Turkey Creek	2770
Sandia	11	Volpe	203
Sam Fordyce N.	151	White Point	71
Sam Fordyce	1813	E. White Point	7400
Sarnosa	367	Zim	3
Sexet	8730		

8. Rule 2 of Section A, Division 9, as contained in an Order of the Railroad Commission dated October 17, 1933, pertaining to the Gulf Coast District is hereby readopted and amended as follows:

Rule 2. Not more than Two Hundred Twenty-five Thousand Three Hundred Seventy-two (225,372) barrels of crude oil shall be produced from said District during any day of the effective period of this Order, which shall be distributed as follows:

Aldine Area	58	Boling	1536
Allen Dome	5	Brenham	40
Amelia	3314	Brookshire	3
Anahuac	6190	Buckeye	112
Armour	180	Buttermilk Slough	25
Arriola	245	Caplen	232
Bammel	100	Cedar Bayou	49
Barbers Hill	9282	Cedar Point	550
Batson (New)	922	China, South	116
Batson (Old)	491	Chriesman	30
Bay City	3710	Clam Lake	154
Beaumont, West	2664	Clay Creek	384
Big Creek	375	Clear Lake	822
Blue Ridge	661	Cleveland	225

[fol. 687] Clinton	165	Martha	232
Conroe	21200	Mykawa	136
Cotton Lake	308	Mykawa, New	1033
Cotton Lake, S.	1403	Nome	833
Damon Mound	359	North Dayton	85
Danbury Dome	316	North Houston	232
Dickinson	4935	Old Ocean	11260
Esperson Dome	1275	Orange	395
Esperson Dome S.	560	Orange, West	2046
Eureka Heights	2009	Orchard	206
Eureka Heights (D)	32	Palacios	61
Fairbanks	7770	Pickett Ridge	1174
Fannett	306	Pierce Junction	2508
Garwood	23	Port Neches	496
Gillock	6464	Port Neches, W.	257
Goose Creek	2054	Raccoon Bend	1598
Green-s Lake	46	Raccoon Bend (Cockfield)	2940
Hamman, Shallow	466	Rosslyn	30
Hamman, Deep	2615	Sandy Point	64
Hankamer	692	Saratoga	1289
Hankamer, New	210	Satsuma	459
Hardin	5190	Schwab	58
Hastings	17250	Schwab-Wilcox	300
High Island	2453	Seabreeze	165
Hillje	33	Segno	1182
Hitchcock	690	Segno, Deep	1800
Hull, New	3861	Silsbee	1245
Hull, Old	2180	Sour Lake	1738
Humble	3283	South Houston	2180
Joes Lake	1210	South Liberty	575
Kubela	525	Spindletop	1992
LaBelle	70	Sugarland	4930
League City	2100	Thompson, North	1365
Livingston	1984	Thompson	11907
Lochridge	2592	Tomball	6080
Lost Lake	120	Turtle Bay	890
Louise	1125	Turtle Bay (Lotz Sand)	10
Lovells Lake	1990	Webster	8730
Magnet	1378	West Columbia	1772
Manvel Miocene	2365	West Columbia (Vicksburg)	25
Manvel Oligocene	4055		
Markham	1178		
Markham, North	106		

West Columbia (New)	3542	Wilson Creek	58
Willow Slough	273	Withers & Five Corners	5800

It is Further Ordered That allowable oil in the foregoing Order is measured on 100 per cent tank tables according to the Pipe Line Rule Number Nine (9), and corrected to Sixty (60) degrees Fahrenheit.

It is Further Ordered That this Cause be held open on the Docket for such further orders as may be necessary and supported by evidence of record.

Railroad Commission of Texas, Lon A. Smith, Chairman; Ernest O. Thompson, Jerry Sadler, Commissioners. (Seal.) Attest C. F. Pete, Secretary.

STATE OF TEXAS,
County of Travis.

I, C. F. Petet, Secretary of the Railroad Commission of the State of Texas, do hereby certify that the attached order described as follows:

Order of the Railroad Commission of Texas dated January 24th, 1940, entitled "Special Order Affecting the Allowable Production of Crude Oil in the Various Fields and [fol. 688] Districts in Texas" is a true and correct copy of the original order now on file in the Railroad Commission, and in my custody as Secretary and Custodian of the files of the Railroad Commission.

Witness my hand and seal of the Railroad Commission of Texas, this 31st day of January, 1940.

(Signed) C. F. Petet, Secretary. (Seal.)

[Endorsed:] No. 31 Civil Filed 13th day of February, 1940. Maxey Hart, Clerk. (Signed) By Maxey Hart. Pltff's Ex. 10.

[fol. 689] PLAINTIFFS' EXHIBIT No. 12

Railroad Commission of Texas

Oil and Gas Division

Oil and Gas Docket No. 120

#6-1248

In re: CONSERVATION AND PREVENTION OF WASTE OF CRUDE PETROLEUM AND NATURAL GAS IN THE EAST TEXAS FIELD

Austin, Texas, January 24, 1940.

Special Order Shutting Down the East Texas Field Covering Rusk, Smith, Gregg, Cherokee and Upshur Counties, Texas

Whereas, After due Notice hearings have been held in Austin, Texas, at various times including a hearing on January 18, 1940, with respect to the existence and imminence of waste of oil and gas in the State of Texas and the prevention thereof, and

Whereas, On January 24, 1940, the Commission issued a "Special Order Fixing the Allowable Production of Crude Oil in the Various Fields and Districts in Texas," and

Whereas, Under said Order of the Commission the maximum quantity of oil which is permitted to be produced from the East Texas Field was set at 690,000 barrels per day, and

Whereas, The Commission finds that in order to maintain the bottom-hole pressure in the East Texas Field and in order to prevent waste, it is necessary that all wells in the East Texas Field be closed in for a total of twelve (12) days during the month of February, 1940:

Therefore It Is Ordered That each and every well in the East Texas Field shall be shut in on the following days: February 3, 4, 7, 10, 11, 14, 17, 18, 21, 24, 25 and 28, 1940.

[fol. 690] It Is Further Ordered That no exceptions to this Order will be granted except when justified by evidence presented to the Commission to the effect that, because of reservoir conditions, continuous production should be maintained to prevent physical waste, in which case, the total allowable of the well or wells so excepted shall be reduced during the period covered by this Order an amount

equivalent to twelve (12) days' allowable during the month of February, 1940.

It Is Further Ordered That the natural gasoline extraction plants be and are hereby given authority to advise the operators of the oil wells connected to their gathering systems that it will be agreeable for those operators of oil wells to produce their allowable oil on each of the days covered by this shut-down order with the understanding, however, that operators of oil wells so producing restrict the production a total of twelve (12) days during the month of February, 1940.

It Is Further Ordered That this Order shall not apply to those wells in the East Texas Field which the Commission has found to be marginal wells and shown to be such on the Commission's current proration schedule now in force and effect in the East Texas Field.

It Is Further Ordered That this Cause be held open on the Docket for such other and further orders as may be necessary and supported by evidence of record.

Railroad Commission of Texas, Lon A. Smith, Chairman, Ernest O. Thompson, Jerry Sadler, Commissioners. (Seal.)

Attest: C. F. Petet, Secretary.

[fol. 691] State of Texas,
County of Travis:

I, C. F. Petet, Secretary of the Railroad Commission of the State of Texas, do hereby certify that the attached order, described as follows:

Order of the Railroad Commission of Texas dated January 24th, 1940, entitled "Special Order Shutting Down the East Texas Field Covering Rusk, Smith, Gregg, Cherokee, and Upshur Counties, Texas"

is a true and correct copy of the original order now on file in the Railroad Commission, and in my custody as Secretary and Custodian of the files of the Railroad Commission.

Witness my hand and seal of the Railroad Commission of Texas, this the 31st day of January, 1940.

(Signed) C. F. Petet, Secretary. (Seal.)

Endorsed: No. 31 Civil. Filed 13th day of February, 1940. Maxey Hart, Clerk. (Signed) Maxey Hart. Pltffs. Ex. 12.

[fol. 692] PLAINTIFFS' EXHIBIT No. 13

Railroad Commission of Texas Oil and Gas Division

Oil and Gas Docket Nos. 108, 120, 123, 124, 125, 126, 128, 129, 132 and 146

20-1238

In re CONSERVATION AND PREVENTION OF WASTE OF CRUDE PETROLEUM AND NATURAL GAS IN THE STATE OF TEXAS

Austin, Texas, January 24, 1940.

ORDER AMENDING PARAGRAPH 3, "MARGINAL WELL EXEMPTION," IMMEDIATELY PRECEDING DIVISION (1) OF OIL AND GAS CIRCULAR No. 16-B.

Pursuant To notice and hearing and based on the finding of fact recited therein and in accordance with the legal opinion of the Attorney General of the State of Texas defining marginal wells as that term is used in Article 6049b of the Civil Statutes of the State of Texas, as well as the power of the Railroad Commission of Texas, to regulate the production from marginal wells, the Commission Order of May 15, 1934, issued as Oil and Gas Circular No. 16-B is hereby amended in the following particulars to-wit:

Paragraph 3, Marginal Well Exemption immediately preceding Division (1) of Oil and Gas Circular No. 16-B is hereby amended, effective February 1, 1940, to read as follows:

"3. *Defining Marginal Wells and Fixing the Amount of Oil that May be Produced Therefrom.*——

"Section A. Each pumping oil well within this State having a daily capacity for production of only ten (10) barrels or less averaged over the preceding 30 consecutive day period and producing from a depth of 2,000 feet or less shall be allowed to produce any amount of oil up to and including ten (10) barrels of oil per day.

"Section B. Any pumping oil well within this State hav- [fol. 693] ing a daily capacity for production of only twenty (20) barrels or less averaged over the preceding 30 consecutive day period and producing from a horizon deeper

than 2,000 feet and less than 4,000 feet shall be allowed to produce any amount of oil up to and including 20 barrels of oil per day.

"Section C. Any pumping oil well within this State having a daily capacity for production of only twenty-five (25) barrels or less averaged over the preceding 30 consecutive day period and producing from a horizon deeper than 4,000 feet and less than 6,000 feet shall be allowed to produce any amount of oil up to and including 25 barrels of oil per day.

"Section D. Any pumping oil well within this State having a daily capacity for production of only thirty (30) barrels or less averaged over the preceding 30 consecutive day period, and producing from a horizon deeper than 6,000 feet and less than 8,000 feet shall be allowed to produce any amount of oil up to and including 30 barrels of oil per day.

"Section E. Any pumping oil well within this State having a daily capacity for production of only thirty-five (35) barrels or less averaged over the preceding 30 consecutive day period and producing from a horizon deeper than 8,000 feet shall be allowed to produce any amount of oil up to and including thirty-five (35) barrels of oil per day."

This order shall remain in force until duly changed by an Order of the Railroad Commission of Texas.

It is Further Ordered That this Cause be held open on [fol. 694] the Docket for such other and further orders as in the opinion of the Commission may be necessary and supported by evidence of record in said Cause.

Railroad Commission of Texas, Lon A. Smith, Chairman; Ernest O. Thompson, Jerry Sadler, Commissioners. (Seal.)

Attest: C. F. Petet, Secretary.

STATE OF TEXAS,
County of Travis:

I, C. F. Petet, Secretary of the Railroad Commission of the State of Texas, do hereby certify that the attached order, described as follows:

Order of the Railroad Commission of Texas dated January 24th, 1940, entitled "Order Amending Paragraph 3,

'Marginal Well Exemption,' Immediately Preceding Division (1) of Oil & Gas Circular No. 16-B''

is a true and correct copy of the original order now on file in the Railroad Commission, and in my custody as Secretary and Custodian of the files of the Railroad Commission.

Witness my hand and seal of the Railroad Commission of Texas, this the 31st day of January, 1940.

(Signed) C. F. Petet, Secretary. (Seal.)

Endorsed: No, 31 Civil. Filed 13th day of February, 1940. Maxey Hart, Clerk. (Signed) Maxey Hart. Pltffs Ex. 13.

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No. 31 Civil
Filed 14 th. day of Feb
19 40 at o'clock M.
MAXEY HART, Clerk.
By J. E. Davis
Deputy.

PLAINTIFFS EXHIBIT No. 14.

EAST TEXAS FIELD: TABLE I.

COMPARISON OF THE DAILY ALLOWABLE PER 100 ACRE-FEET OF OIL SAND BETWEEN HUMBLE COMPANY LEASES FAVORABLY SITUATED IN VARIOUS PARTS OF THE FIELD AND OTHER LEASES FAVORABLY AND LESS FAVORABLY SITUATED IN THE GENERAL VICINITY AS OF FEBRUARY 1, 1940

Example	Company	Lease	Survey	No. Wells	Prod. Acres	Sand Thickness	Acre-Feet	Daily Allowable	Allowable per Day per 100 Acre-Feet of Sand	Ratio Over Humble
I. LONGVIEW DISTRICT:										
	Humble	**KILLINGSWORTH, MATTIE**	**Hathaway & Ferguson**	20	99.70	102.0	10,170.0	860.12	8.50	
	Yeager & Schubert	Finley-Thomas	Alexander, C.	8	11.88	47.0	558.0	182.33	32.70	3.8
	Simmons & Alexander	Jackson, Red Bird-Blk.26	Dillard, M.	3	1.55	30.0	46.5	72.12	155.10	18.2
	Carr, A. P.	Ritchie, G. W.	Carleton	15	15.63	71.9	1,124.3	347.95	30.95	3.6
	Skipper Oil Co.	Snoddy, Thad	Castleberry	4	4.00	37.5	150.0	85.90	57.27	6.7
II. KILGORE DISTRICT:										
	Humble	**LAIRD, S. S. "A"**	**Ruddle, I.**	43	230.00	74.3	17,083.0	1,406.23	8.23	
	Henry Oil Co.	Laird, S. S. & Ben	Van Winkle, Mary	12	7.97	42.5	338.7	245.89	72.60	8.8
	Rancho Oil Co.	Bean, Crim Blk. 4	Van Winkle, Mary	7	2.00	42.0	84.0	141.19	168.10	20.4
	Patterson Drlg. Co.	Brock, M.	Winn, R.	6	9.00	50.7	456.0	139.78	30.65	3.7
	Moss, H. S.	Marshall	Van Winkle, Mary	16	38.93	10.0	389.3	317.98	81.68	9.9
III. HENDERSON:										
	Humble	**WOOLEY, T. M.**	**Cordova**	9	55.50	58.1	3,196.0	309.70	9.69	
	Fisher, F. W.	Eaton "B"	Cordova	23	21.13	70.0	1,479.1	510.60	34.52	3.6
	Miller Prod. Corp.	Bradford, D. "B"	Ximines	8	16.00	15.5	248.0	162.20	65.40	6.8
	Texas Trading Co.	Deason	Pru	5	6.00	43.0	258.0	103.95	40.29	4.2
	Texas-Jersey	Keeling "B"	Cordova	5	0.58	75.0	43.5	101.65	233.68	24.1
	LeMaster	Wright	Vargas	5	3.00	44.0	132.0	104.15	78.90	8.1
	Lewbree & Su-Mi	Cook, S. S.	Vargas	8	10.00	11.0	110.0	162.38	147.57	15.2

PLAINTIFFS EXHIBIT No. 15

EAST TEXAS FIELD: TABLE II.

Filed 14 day of Feb. 10.31 Civil
1940 at o'clock M.
MAXEY HART, Clerk.
By J. E. Davis Deputy.

COMPARISON OF THE RELATIVE DAILY ALLOWABLE PER 100 ACRE-FEET OF OIL SAND BETWEEN HUMBLE OIL & REFINING COMPANY PROPERTIES AND OFFSETTING LEASES
AS OF FEBRUARY 1, 1940

Company	Lease	Survey	Prod. Acres	No. Wells	Den-sity	Avg. Sand Thick-ness	Acre-Feet of Oil Sand	Avg. Poten-tial	Avg. Pressure	Lease Allowable	Allow-able per Day per 100 Ac./Ft. of Sand	Ratio Over Humble
LONGVIEW DISTRICT:												
Humble	BOWLES, J. F.	Ferguson, D.	100.50	19	5.29	79.9	8,030.0	908.9	1139.2	732.17	9.12	
Offset Leases												
Tillery, J. L.	Wheeler, Wm. Heirs	Ferguson	2.66	1	2.66	81.0	215.5	885.0	1135.0	29.15	13.53	1.5
Pudco O.&G. Co.	Fenn, M. J.	"	3.70	2	1.85	81.5	301.6	930.0	1140.0	53.54	17.75	1.9
Rancho Oil Co.	Fenn, M. J.	"	7.50	3	2.50	84.0	630.0	923.3	1135.0	87.97	13.96	1.5
Humble	HUGHES, A. L.	Hampton & Wakeland	90.80	20	4.54	84.9	7,708.9	929.5	1133.5	744.41	9.66	
Offset Leases												
McLemore, M. C.	Gladewater School	Wakeland, W. C.	1.00	1	1.00	87.0	87.0	955.0	1130.0	23.98	27.56	2.9
Trapp & Blankenship	Fenn, M. J.	Hampton, G. C.	2.00	1	2.00	83.0	166.0	915.0	1140.0	27.34	16.47	1.7
Atlantic O.P. Co.	HollySprings Ch.	Ferguson, D.	2.00	1	2.00	86.0	172.0	930.0	1130.0	27.66	16.08	1.7
Rancho Oil Co.	Fenn, M. J. "B"	"	11.00	4	2.75	83.5	918.5	927.5	1137.5	121.03	13.18	1.4
Humble	JOHNSON, G. W.	Hooper, G. W.	98.90	26	3.80	64.9	6,418.6	839.6	1104.7	772.18	12.03	
Offset Leases												
Canadian P. Co.	Christian, Tom	Hooper, G. W.	.67	1	.67	68.0	45.6	900.0	1110.0	21.93	48.09	4.0
F.H.E. Oil Co.	Christian, J. M.	"	7.85	6	1.31	80.3	630.6	917.5	1105.0	147.12	23.33	1.9
Atlantic O.P. Co.	Johnson, G. W.	"	1.50	1	1.50	72.0	108.0	875.0	1110.0	24.44	22.63	1.9
Woodrow Pet. Corp.	Johnson, D. M.	"	1.50	1	1.50	72.0	108.0	875.0	1110.0	24.44	22.63	1.9
Margay Oil Co.	Christian, Tom	"	24.71	12	2.06	67.8	1,676.1	910.4	1100.0	310.52	18.53	1.5
Humble	JOHNSTON, D. "A"	Crosby, J. R.	88.13	13	6.78	39.2	3,454.7	831.9	1166.8	401.85	11.63	
Offset Leases												
Lee, T. W.	Lee Fee	Rigsby, L. J.	.50	1	.50	42.0	21.0	650.0	1170.0	20.68	98.48	8.5
Meco Prod. Co.	Hickman (Blk.71)	Dillard, M.	1.17	1	1.17	27.0	31.6	825.0	1175.0	21.30	67.41	5.8
Meco Prod. Co.	T&P RR (Blk.48)	"	1.28	1	1.28	28.0	35.8	805.0	1175.0	21.43	59.86	5.1
Lange Cable Tool	Beamer, J. C.	"	.98	1	.98	38.0	37.2	745.0	1170.0	21.38	57.47	4.9
Roosth & Genecov	Todd, S. D.	"	2.50	2	1.25	35.5	88.8	765.0	1170.0	42.68	48.06	4.1
Meco Prod. Co.	T&P RR (Blk.72)	"	2.42	1	2.42	27.0	65.3	832.0	1175.0	22.71	34.78	3.0
Roosth & Genecov	Johnson, D.	"	2.00	1	2.00	30.0	60.0	625.0	1175.0	22.02	36.70	3.2
Pitzer & West	Johnson, D. "B"	Rigsby, L. J.	11.54	4	2.88	40.3	465.1	757.5	1170.0	97.41	20.94	1.8

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EAST TEXAS FIELD: TABLE II.
Page 2.

Company	Lease	Survey	Prod. Acres	No. Wells	Density	Avg. Sand Thickness	Acre-Feet of Oil Sand	Avg. Potential	Avg. Pressure	Lease Allowable	Allowable per Day per 100 Ac./Ft. of Sand	Ratio Over Humble
KILGORE DISTRICT:												
Humble	CRIM, L. D.	Sevier-Chism	915.43	188	4.87	65.8	60,235.3	856.6	1136.4	6,101.28	10.13	
Offset Leases												
Luling O.&G. Co.	Brightwell,W.J. "A"	Winn, R. E.	10.00	4	2.50	43.3	432.5	888.7	1145.0	98.64	22.81	2.3
Upchurch & Co.	Brightwell, W. J.	"	10.00	4	2.50	46.7	467.0	875.0	1140.0	99.75	21.31	2.1
Atlantic O.P. Co.	Brightwell, W.J. "B"	"	10.00	4	2.50	49.0	490.0	871.2	1140.0	100.63	20.54	2.0
Lyons, C. H.	Ladd, Dave	Hobson, H.	2.50	1	2.50	78.0	195.0	740.0	1110.0	26.79	13.74	1.4
Wooley Pet. Co.	Ladd, Dave	"	2.50	1	2.50	80.0	200.0	735.0	1105.0	26.88	13.44	1.3
Humble	KNOWLES, J. A.	Van Winkle, Mary	100.00	29	3.45	29.9	2,990.0	336.6	1004.4	625.77	20.93	
Offset Leases												
Harcher O. Co.	K. of P. Lodge	Van Winkle, Mary	.25	1	.25	14.0	3.5	200.0	985.0	20.03	572.29	27.3
McMurray, Jim.	Col. Baptist Ch.	"	.56	2	.28	13.0	7.3	192.5	990.0	40.06	548.77	26.2
Murray, C. H.	Odd Fellows Lodge	"	.50	1	.50	14.0	7.0	200.0	990.0	20.06	286.57	13.7
Degener & Co.	Bell, S.	"	1.67	2	.84	11.0	18.4	155.0	985.0	40.12	218.04	10.4
Dodwell, L. E.	Alexander, L.	"	3.50	4	.87	10.8	37.6	168.7	985.0	80.28	213.51	10.2
Jenkins, J. J.	Alexander, C.	"	2.11	2	1.05	10.0	21.1	115.0	985.0	40.10	190.05	9.1
Potter Bros.	Kilgore Col. Ch.	"	1.44	2	.72	15.0	21.6	205.0	990.0	40.18	186.02	8.9
Murray, C. H.	Walton, Ida	"	1.00	1	1.00	14.0	14.0	200.0	990.0	20.12	143.71	6.9
Wells & Gann	Johnson, Gordie	"	4.70	5	.94	14.8	69.6	199.0	996.0	100.59	144.53	6.9
Spear, A.	Ector, H.	"	1.00	2	.50	40.0	40.0	415.0	1040.0	40.74	101.85	4.9
Brown, W. A.	Cheesborough, W.	"	1.53	2	.76	14.0	21.4	202.5	990.0	40.18	97.05	4.6
Moss Oil & Gas Co.	Walton, Ida	"	4.67	3	1.56	14.3	66.9	203.3	990.0	60.60	90.58	4.3
Hastings et al	Robinson, W. M.	"	4.70	3	1.56	17.0	79.9	241.6	1015.0	60.82	76.12	3.6
Humble	THOMAS, DURA	Van Winkle, Mary	59.05	22	2.68	52.8	3,117.8	417.0	1022.0	496.29	15.92	
Offset Leases												
Trapp, M. E.	King, J. R.	Van Winkle, Mary	1.46	6	.24	48.2	69.4	273.3	1010.0	120.82	174.09	10.9
Atlantic O.P. Co.	Barton, P. E.	"	3.36	2	1.68	49.5	166.3	390.0	1025.0	42.88	25.78	1.6
Reynolds, Roy A.	Elder, Mrs. Z.	"	2.95	4	.74	52.0	153.4	287.5	1028.0	81.92	53.40	3.4
WrightSmith O. Co.	Harris, I. E.	"	1.48	2	.74	52.0	77.0	310.0	1015.0	41.02	53.27	3.4
Atlantic O.P. Co.	Elder, Tripp "A"	"	7.62	7	1.09	43.3	329.9	355.7	1022.9	143.06	43.97	2.8
Prod. Inv. Co.	Butts, J. A.	"	11.07	9	1.23	52.2	578.1	364.4	1020.0	189.13	32.72	2.1
Atlantic O.P. Co.	Elder, Tripp "B"	"	.86	1	.86	40.0	34.4	395.0	1020.0	20.59	59.85	3.8
Overton Refg. Co.	Butts, J. T.	"	.25	3	.08	50.0	12.5	261.7	1015.0	60.15	481.20	30.2
Gold Star Oil Co.	Butts, J. T.	"	.70	2	.35	50.0	35.0	330.0	1015.0	40.50	115.71	7.3
Potter Bros.	Butts, J. A.	"	.20	3	.07	50.0	10.0	303.3	1015.0	60.15	601.50	37.8
Hamill & Smith	Butts, J. T.	"	.22	2	.11	32.5	7.2	295.0	1015.0	40.14	557.50	35.0

EAST TEXAS FIELD: TABLE II.
Page 3.

Company	Lease	Survey	Prod. Acres	No. Wells	Den-sity	Avg. Sand Thick-ness	Acre-Feet of Oil Sand	Avg. Poten-tial	Avg. Pressure	Lease Allowable	Allow-able per Day per 100 Ac./Ft. of Sand	Ratio Over Humble
HENDERSON DISTRICT:												
Humble	KEE, W. B.	Field-Womack	95.38	16	5.96	24.4	2,327.3	727.8	1172.8	406.19	17.45	
Offset Leases												
Archer, C. L.	Stewart, J. H.	Womack, J.	7.00	3	2.33	14.3	100.3	535.0	1180.0	62.68	62.49	3.6
Sklar	"	"	3.00	1	3.00	16.0	48.0	480.0	1175.0	21.15	44.06	2.5
Snyder	"	"	3.00	1	3.00	16.0	48.0	595.0	1175.0	21.42	44.63	2.6
Williams, I.M. Tr.	Goforth, T. H.	Lindley-Thompson	18.65	5	3.73	16.0	298.4	542.0	1176.0	108.01	36.20	2.1
Johnson, T.A. Tr.	Stewart, J. H.	Womack, J.	8.00	2	4.00	15.5	124.0	550.0	1175.0	43.40	35.00	2.0
Humble	FLOWMAN,S.A. "A & B"	Cordova, F.	242.96	52	4.67	63.0	15,306.5	788.9	1038.2	1,581.24	10.33	
Offset Leases												
F.H.E. Oil Co.	Thompson, M. L. "D"	Cordova, F.	15.00	5	3.00	48.2	723.0	622.0	1016.0	120.01	16.60	1.6
Powell, N. P.	Thompson, M. L.	Pru, M. J.	10.00	5	2.00	62.8	628.0	641.0	1018.0	117.36	18.69	1.8
F.H.E. Oil Co.	Thompson, M. L. "E"	Cordova, F.	1.00	1	1.00	51.0	51.0	675.0	1020.0	21.49	42.14	4.1
Magnolia Pet. Co.	Barksdale, C.	Pru, M. J.	15.00	5	3.00	54.6	819.0	612.0	1010.0	121.47	14.83	1.4

No. 31 Civil
Filed 14th day of Feb.
19 40 at o'clock M.
MAXEY HART, Clerk.
By J. E. Davis
Deputy.

PLAINTIFFS EXHIBIT No. 16

EAST TEXAS FIELD: TABLE III.

DAILY ALLOWABLE PER 100 ACRE-FEET OF SAND FOR LEASES OF TWO ACRES OR LESS (EXCLUDING LEASES WITH MARGINAL WELLS) COMPARED WITH HUMBLE OIL & REFINING COMPANY PROPERTIES

Number Acres per Tract	No. of Tracts	Total Acres	Average Density	No. Wells	Avg. Sand Thickness	Total Acre-Feet of Oil Sand	Daily Lease Allowable 2/1-40	Allowable per Day per 100 Acre-Feet of Sand
.00 - .49	159	98.12	.22	448	45.1	4,421.6	9,022.81	204.1
.50 - .99	169	318.50	.73	436	42.1	13,394.1	9,109.93	68.0
1.00 - 1.49	236	751.45	1.19	631	42.5	31,937.3	13,739.49	43.0
1.50 - 2.00	271	1,466.46	1.77	829	43.0	63,073.9	18,653.68	29.6
Total	835	2,634.53	1.12	2,344	42.8	112,826.9*	50,525.91	44.8
Total Humble Properties		14,656.03	5.75	2,547	48.3	707,770*	77,195.59	10.9
Field - Excluding Humble Properties		116,674.97	4.98	23,423	36.5	4,253,776	614,105.41	14.4
Total Field		131,331.00***	5.06	25,970	37.8	4,961,546**	691,301.00	13.9

* Taken from Railroad Commission Data.
** Obtained by Planimeter Measurement of Railroad Commission Isopach Map. Area Between 0-10' Contours Assigned 10' Average Sand.
*** Estimated by Railroad Commission Office.

PLAINTIFFS EXHIBIT No. 17

EAST TEXAS FIELD: TABLE IV-A.

LONGVIEW DISTRICT

A COMPARISON OF THE RELATIVE DAILY ALLOWABLE OF WELLS WITH VARYING SAND THICKNESS SHOWING HOW THE ALLOWABLE PER 100 ACRE-FEET OF SAND DECREASES AS THE AVERAGE SAND THICKNESS INCREASES

No. 51 Civil
Filed 14th day of Feb.
19 40 at o'clock M.
MAXEY HART, Clerk.
By J. E. Davis Deputy.

Company	Well Name	From Railroad Commission Allowable Schedule.- February 1, 1940 Density	Sand Thickness	Pressure	Potential	Acre-Feet	Allowable	Allowable per Day per 100 Acre-Feet of Sand
Grace Oil Co.	# 3 Starker	5.35	10'	1185	195	53.5	20.53	38.37
Iowa Payne Oil Co.	# 5 York	5.16	20'	1180	385	103.2	21.99	21.31
Texas Co.	# 4 Johnson	4.87	30'	1170	835	146.1	26.04	17.82
Cox & Hamon	# 1 Rodden	5.86	40'	1165	825	234.4	30.11	12.85
Humble O. & R. Co.	# 4 McFarland	5.39	49'	1165	840	264.1	30.93	11.71
Cities Service	# 3 Jeter, L. A.	4.89	60'	1158	820	293.4	31.80	10.84
Cities Service	#13 Jeter, L. A.	4.89	70'	1155	815	342.3	33.65	9.83
Cities Service	#10 Rogers	5.42	80'	1140	900	433.6	38.84	8.96
Sun	# 2 Akin, J. W.	5.45	90'	1125	965	490.5	42.60	8.69
Sun	#16 Akin, J. W.	5.45	100'	1125	970	545.0	45.24	8.30
Sinclair-Prairie	# 9 Akin, J. W. "A"	5.68	90'	1110	975	511.2	43.43	8.50
Amerada	# 7 Bumpas, C.	5.78	80'	1100	950	462.4	40.46	8.75
Sun	# 2 Satterwhite	4.99	70'	1090	940	349.3	35.16	10.07
Arkansas	# 5 Orms, L. E.	5.00	60'	1090	920	300.0	32.74	10.91
Lucey Pet.	# 7 Fisher	5.42	50'	1085	890	271.0	31.08	11.47
Humble O. & R. Co.	#13 Harris, T. B. & T. D.	5.47	40'	1075	690	218.8	26.87	12.28
Humble O. & R. Co.	#20 Harris, T. B. & T. D.	5.47	30'	1065	550	164.1	24.07	14.67
Monday	# 1 Harris, T. B. "B"	4.43	20'	1060	400	88.6	21.59	24.37
Monday	# 5 Harris, T. B. "B"	4.43	10'	1055	200	44.3	20.39	46.03

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PLAINTIFFS EXHIBIT No. 18

EAST TEXAS FIELD: TABLE IV-B.

LONGVIEW DISTRICT

SUPPLEMENT TO TABLE IV-A: ASSUMING A DENSITY OF FIVE ACRES FOR EACH WELL IN COMPUTING DAILY ALLOWABLE

No. 51 Chart 14 am of Kilgore Field as shown on MAXEY HART, Clerk

Company	Well Name	Density	From Railroad Commission Allowable Schedule - 2/1-40 Sand Thickness	Pressure	Potential	Acre-Feet	Allowable	Allowable per Day per 100 Acre-Feet of Sand
Grace Oil Co.	# 3 Starker	5.00	10'	1185	195	50.0	20.49	40.98
Iowa Payne Oil Co.	# 5 York	5.00	20'	1180	385	100.0	21.92	21.92
Texas Co.	# 4 Johnson	5.00	30'	1170	835	150.0	26.20	17.47
Cox & Hamon	# 1 Rodden	5.00	40'	1165	825	200.0	28.14	14.07
Humble O. & R. Co.	# 4 McFarland	5.00	49'	1165	840	245.0	30.16	12.31
Cities Service	# 3 Jeter, L. A.	5.00	60'	1158	820	300.0	32.07	10.69
Cities Service	#13 Jeter, L. A.	5.00	70'	1155	815	350.0	33.95	9.70
Cities Service	#10 Rogers	5.00	80'	1140	900	400.0	37.38	9.35
Sun	# 2 Akin, J. W.	5.00	90'	1125	965	450.0	40.69	9.04
Sun	#16 Akin, J. W.	5.00	100'	1125	970	500.0	43.11	8.62
Sinclair-Prairie	# 9 Akin, J. W. "A"	5.00	90'	1110	975	450.0	40.65	9.03
Amerada	# 7 Bumpas, C.	5.00	80'	1100	950	400.0	37.70	9.42
Sun	# 2 Satterwhite	5.00	70'	1090	940	350.0	35.19	10.05
Arkansas	# 5 Orms, L. E.	5.00	60'	1090	920	300.0	32.74	10.91
Lucey Pet.	# 7 Fisher	5.00	50'	1085	890	250.0	32.27	12.91
Humble O. & R. Co.	#13 Harris, T. B. & T. D.	5.00	40'	1075	690	200.0	26.28	13.14
Humble O. & R. Co.	#20 Harris, T. B. & T. D.	5.00	30'	1065	550	150.0	23.72	15.81
Monday	# 1 Harris, T. B. "B"	5.00	20'	1060	400	100.0	21.80	21.80
Monday	# 5 Harris, T. B. "B"	5.00	10'	1055	200	50.0	20.45	40.90

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PLAINTIFFS' EXHIBIT NO. 29.

COMPARISON OF ACRE FEET OF SAND, WELL DENSITY, ALLOWABLE AND ALLOWABLE PER 100 ACRE FEET PER DAY FOR EAST TEXAS FIELD AND VARIOUS LEASES INCLUDING ROWAN & NICHOLS TODD "A" LEASE

- - - - - - - - - -

Company and Lease		Acres	S.T.	Acre Feet Sand	Allow-ables	Density	Barrels per 100 acre feet sand
Rowan & Nichols Todd "A"		28.25	93	2627.00	260.56	4.03	10.11
Hamill & Smith,	Archbault	.06	13	.78		.06	
	Barton	.76	43	32.68		.38	
	Benham	2.50	31	52.50		2.50	
	Butts	.22	51	11.22		.11	
	Butts "A"	.27	50	13.50		.13	
	Culp	.52	43	22.36		.10	
	Dumas	.06	16	.96		.06	
	Griffin	.10	31	3.10		.10	
	Everette	10.25	24	246.00		2.05	
	Faircloth	5.00	10	50.00		1.67	
	Herd	.34	45	15.30		.34	
	Hughey	.82	23	18.86		.21	
	Knowles	1.53	15	22.95		.22	
	Lacy	.26	50	13.00		.09	
	Sanders	.12	10	1.20		.12	
	Sugar	.08	30	5.40		.08	
Hamill & Smith Total				509.81	914.13		62.62
R.M.Wood - R.M.Wood		1	89	89	24.11	1	27.08
Pace Petroleum Corp. Tripp Elder		1.4	45	83	88.77	.35	140.90
Ambasador Oil Co. London School		3.47		242.09	308.85	.23	127.15
Total for East Texas Field		131,794	37.86	4,990,350	6,900.00	5.07	13.82

ENDORSED: NOS. 31, 36 and 46 CIVIL. Filed 14th day of Feb., 1940. MAXEY HART, Clerk. (Signed) By J. E. Davis, Deputy. Pltffs. Ex. 29.

PLAINTIFF'S EXHIBIT NO. 27.

JAN. 1, 1940.

COMPARISON OF ROWAN & NICHOLS' TODD "A" LEASE TO EAST TEXAS FIELD.

	East Texas Field	Rowan-Nichols Todd "A"	%
Total Proven Acreage	131,794	28.25	.0214349
Total Acre Ft. of Sand	4,990,350	~~26~~ 27	.052642
Average Sand Thickness	37.86'	93.00	
Expected Recovery Per Acre Foot	927.40	927.40	
Revised Original Expected Recoverable Oil	4,629,054,298	2,434,656	.052606
Production to Jan. 1,1940	1,447,821,784	493,120	.0340594
Remaining Recoverable Oil	13,180,232,515	1,941,536	.0610501
Depletion in Percent	31.28%	20.25%	
Daily Rate of Production Jan. 1, 1940	690,000	260.52	.037762
Number of Days Required to Deplete at Present Rate	4609	7750	
Number of Years Required to Deplete at Present Rate (365 Days)	12.62	21.23	
No. of Years Req. to Deplete Present Rate (261 Days)	17.66	29.69	

ROWAN & NICHOLS OVER ALL PRODUCTION LOSS IN BARRELS TO JAN. 1, 1940 DUE TO PRESENT AND PAST PRORATION ORDERS 269,035.

ENDORSED: Nos. 31, 36 and 46 Civil. Filed 13th day of Feb. 1940. MAXEY HART, Clerk. (Signed) By J. E. Davis, Deputy. Pltffs Ex. 27.

PLAINTIFFS' EXHIBIT NO. 29.

COMPARISON OF ACRE FEET OF SAND, WELL DENSITY, ALLOWABLE AND ALLOWABLE PER 100 ACRE FEET PER DAY FOR EAST TEXAS FIELD AND VARIOUS LEASES INCLUDING ROWAN & NICHOLS TODD "A" LEASE

- - - - - - - - - - -

Company and Lease		Acres	S.T.	Acre Feet Sand	Allow-ables	Density	Barrels per 100 acre feet sand
Rowan & Nichols Todd "A"		28.25	93	2627.00	260.56	4.03	10.11
Hamill & Smith,	Archbault	.06	13	.78		.06	
	Barton	.76	43	32.68		.38	
	Benham	2.50	31	52.50		2.50	
	Butts	.22	51	11.22		.11	
	Butts "A"	.27	50	13.50		.13	
	Culp	.52	43	22.36		.10	
	Dumas	.06	16	.96		.06	
	Griffin	.10	31	3.10		.10	
	Everette	10.25	24	246.00		2.05	
	Faircloth	5.00	10	50.00		1.67	
	Herd	.34	45	15.30		.34	
	Hughey	.82	23	18.86		.21	
	Knowles	1.53	15	22.95		.22	
	Lacy	.26	50	13.00		.09	
	Sanders	.12	10	1.20		.12	
	Sugar	.08	30	5.40		.08	
Hamill & Smith Total				509.81	814.13		62.62
R.M.Wood - R.M.Wood		1	89	89	24.11	1	27.08
Pace Petroleum Corp. Tripp Elder		1.4	45	83	88.77	.35	140.90
Ambasador Oil Co. London School		3.47		242.09	308.85	.23	127.15
Total for East Texas Field		131,794	37.86	4,990,350	6,900.00	5.07	13.82

ENDORSED: NOS. 31, 36 and 46 CIVIL. Filed 14th day of Feb., 1940. MAXEY HART, Clerk. (Signed) By J. E. Davis, Deputy. Pltffs. Ex. 29.

PLAINTIFFS' EXHIBIT NO. 30.

COMPARISON OF RESERVES NUMBER OF DAYS REQUIRED TO DEPLETE UNDER PRESENT ALLOWABLE AND PERCENTAGE OF INEQUITIES IF ROWAN & NICHOLS GETS 100% RECOVERY FROM START IF FIELD DEVELOPS.

- - - - - - - - - - -

	Original Reserves	Allowable	No.of days to deplete	Final Recovery	per cent of recovery
Rowan & Nichols Todd A	2,434,656	260.56	9343	2,434,656	100%
Pace Petroleum Tripp Elder	58,426	80.77	723	754,993	1,292%
Ambassador London School Lot	225,265	308.85	793	2,635,600	1,170%
R. M. Wood R. M. Wood	82,538	24.11	3,423	225,329	273%
Hamil & Smith All leases	472,798	814.13	501	8,794,042	18,599%

ENDORSED: NOS. 31, 36 and 46 CIVIL. Filed 14th day of Feb., 1940. MAXEY HART, Clerk. (Signed) By J. E. Davis, Deputy. Pltffs. Ex. 30.

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[fol. 706] PLAINTIFF'S EXHIBIT No. 31

Exhibit A

Houston, Texas, June 16, 1939.

To the Honorable Railroad Commission of Texas;

Now comes Humble Oil & Refining Company, hereinafter sometimes called "Applicant," and respectfully presents this as its motion, requesting the Commission to amend and modify its statewide order dated April 26, 1939 as written and as construed, administered and applied, and to write, construe, administer and apply all future orders fixing the allowable production for the East Texas Field and allocating such allowable production between various properties in the field in such manner as to allocate to Applicant and permit Applicant to produce currently its fair share of such allowable production of oil and in support of this motion, Applicant respectfully says:

1. Applicant is the owner and operator of numerous producing oil and gas mineral leases in the East Texas Field. Its leases in general extend from the northern limits of production to the southern portion of the field. For the most par-, its leases are situated along an axis running in a northerly and southerly direction near the middle of the field; that is to say, in the main, its leases are located in the so-called fairway or in that portion of the field where the producing sands have the greatest thickness and the largest quantity of recoverable oil in place. To be more specific, it owns a number of leases in the M. J. Pru and Francisco Cordova Surveys in the southern portion of the field, a large block of leases in what may be designated as the London area in the field, another block of leases southwest of the town of Kilgore and numerous other leases along [fol. 707] the fairway extending in a northerly direction from the city of Kilgore. A few of its leases are situated west of the north-south axis of the field, while a few of its other leases may be said roughly to lie along the eastern side of the field. Altogether the producing leases operated by it in the East Texas Field occupy in excess of 11% of the producing acreage in the field and contain approximately 14% of the recoverable oil and gas reserves in the field.

2. Applicant has drilled its leases in the field down to an average density of approximately one well to each 5.83 acres of land. It has drilled such number of wells and has so spaced its wells on its leases as to be reasonably able to produce the recoverable oil under its properties without physical waste. Notwithstanding this fact, there are numerous areas in the field offsetting various properties owned by the Applicant which are drilled to a much greater density than are Applicant's properties; and since the Railroad Commission has prescribed an almost equal allowable for all wells in the field, it follows that in many places in the field the Applicant's properties are being severely drained by wells on adjacent properties or other properties in the vicinity of its leases. Not only this, but the method employed by the Commission in fixing the allowable for wells in the field causes non-uniform withdrawals. The withdrawals are excessive in localized areas where wells are densely drilled, while there are much smaller withdrawals per acre in other areas which are not so densely drilled,—thus causing an uneven rise of the water table and uneconomic or wasteful use of the reservoir energy. The allocation of allowables as between wells and properties in the field has no relation whatsoever to the actual recoverable reserves of oil under the various properties in the field.

[fol. 708] Applicant further says that as a consequence of the method by which the Commission allocates the allowable production of oil between the various wells and properties in the field, it is permitted to produce only approximately 9/90% of such total allowable for the field, while, as stated above, it is the owner of and is entitled to produce approximately 14% of the recoverable oil in the field. As a consequence, under the existing proration order and under the plan of production provided for in the order as it is actually construed, applied and administered, the Applicant is being deprived of the opportunity to produce its fair share of the oil in the field, and if orders of similar character are promulgated in the future, the Commission will thereby continue to deny to this Applicant the right to produce its fair share of the recoverable oil in the field, and in effect will confiscate vast quantities of oil, of which the Applicant is the owner, and which it is justly entitled to produce. This would amount to approximately 4% of the total recoverable

reserves in the field if the present order or orders similar in effect to it were continued in force.

3. Applicant further shows to the Commission that heretofore uncontradicted evidence has been introduced at numerous statewide hearings held by the Commission to the effect that the total amount of oil which should be withdrawn from the East Texas Field during any one day on the average should not exceed 380,000 barrels, and that if the average daily allowable production from the field should materially exceed that figure, the bottom hole pressures will drop at an inordinately rapid rate and physical waste of oil and gas will result therefrom. According to the uncontradicted evidence before the Commission, therefore, the top average daily production from the East Texas Field should [fol. 709] not exceed approximately 380,000 barrels per day.

4. Under the law, it is the duty of the Railroad Commission to allocate the allowable production for the field between the various producing properties situated in the field on a reasonable basis in such manner as to afford to each operator a fair opportunity to produce his share of the recoverable oil in the field. The record of the evidence heretofore introduced in various statewide hearings before the Railroad Commission clearly shows that in the statewide order of the Railroad Commission issued under the date of April 26, 1939, fixing the basis upon which the allowable production for the East Texas Field is allocated between the various properties in the field as that order has been construed, applied and administered by the Commission, affords to many operators in the field an opportunity to produce far in excess of their fair share of the current allowable production from the field and at the same time restrain many other operators, including the Applicant, from producing their fair share of the current field allowable. Any other order based upon a similar principle and having future application, would have the same effect. The result is, therefore, that Applicant's oil is being taken from it currently in large quantities and is given to other operators whose properties are more densely drilled than are Applicant's properties. The order of the Commission complained of and any similar order that may hereafter be promulgated

by the Commission is unreasonable, arbitrary, discrimina
tory, confiscatory and void as to Applicant and all thos
who may be similarly situated and deprives the Applican
of its property without compensation and without due pro
cess of law and denies to the Applicant the equal protectio
[fol. 710] of the law in violation of the Fourteenth Amend
ment to the Constitution of the United States and deprive
the Applicant of its liberty, property, privileges and im
munities without due course of the law of the land in vio
lation of Sections 13 and 19 of Article 1 of the Constitutio
of the State of Texas and deprives Applicant of its equa
rights in violation of Section 3 of Article 1 of the Consti
tution of the State of Texas. Applicant further says tha
said order of April 26, 1939 as written and as construed
applied and administered by the Commission is, so far a
Applicant is concerned, in direct violation of the principl
announced by the United States District Court for the West
ern District of Texas, Austin Division, in Cause 624, i
Equity, styled, Rowan & Nichols Oil Company, Complain
ants, v. Railroad Commission of Texas, Respondents, in
memorandum opinion handed down on June 12, 1939.

5. Applicant would respectfully call the Commission'
attention to the fact that heretofore at different statewid
hearings, ample evidence has been introduced upon which i
could base a reasonable order allocating the allowable pro
duction in the East Texas Field between the various proper
ties therein. Particular reference is made to the followin
statewide hearings; that of May 15, 1933; that of Augus
19-20, 1935, and that of August 26-27, 1935. The record o
testimony in those hearings has been reintroduced fro
time to time at statewide hearings held by the Commissio
since those dates and in particular those records were re
introduced in evidence at the statewide hearing of the Com
mission held in the City of Austin on June 12, 1939. Th
attention of the Commission is respectfully called also t
statements made by Mr. R. E. Hardwicke and Mr. Hine
H. Baker at the statewide hearing on June 12, 1939, i
[fol. 711] which they invited the attention of the Commis
sion to the record previously introduced and to the fact tha
those records furnished the Commission with ample ev
dence upon which to enter and enforce reasonable an
valid orders fixing the allowable production for the Eas

Texas Field and allocating such production on an equitable basis between the various properties in that field.

6. Should the Commission feel that it should be in possession of additional facts before granting to Applicant the relief herein requested, or should the Commission be of the opinion that a further hearing should be had on the matters raised in this motion, Applicant respectfully requests that the Commission grant it a hearing immediately in order that the relief prayed for may be granted in the statewide order of the Commission that will be issued for the month of July, 1939, in which the allowable production for the East Texas Field and the basis for allocating the production between properties in the East Texas Field will be fixed.

Wherefore, the premises considered, your Applicant respectfully prays that the Commission's statewide order dated April 26, 1939, and the schedule of allowable production made pursuant thereto, be so amended as at once to permit your Applicant to produce its fair share of the recoverable oil in the East Texas Field, being not less than 14% of the allowable fixed for the entire field, and that in any and all future orders which may be promulgated by the Commission fixing the allowable production for the East Texas Field and allocating such production between the various properties in the field, Applicant be permitted [fol. 712] currently to produce its fair share of the total field allowable which should at all events equal 14% of the total field allowable.

Respectfully submitted, Humble Oil & Refining Company. By Rex G. Baker, Attorney.

[Endorsed:] Nos. 31, 36 and 46 Civil. Filed 14th day of Feb., 1940. Maxey Hart, Clerk. (Signed) By J. E. Davis, Deputy. Pltffs. Ex. 31.

[fol. 713] PLAINTIFFS' EXHIBIT No. 34

Railroad Commission of Texas
Oil and Gas Division

Oil and Gas Docket No. 120

In re: Conservation and Prevention of Crude Petroleum Oil and Natural Gas in the East Texas Field

Austin, Texas, September 2, 1931.

Special Order Fixing Rules and Regulations for the Prevention of Physical Waste of Crude Petroleum Oil and Natural Gas in What is Known as the East Texas Field Composed of Upshur, Smith, Rusk and Gregg Counties, Texas

Whereas, the recently adjourned Special Session of the Forty-second Legislature enacted a comprehensive amendment to the oil and gas conservation laws of the State of Texas, re-defining "waste" of crude petroleum oil and natural gas and prescribing the powers of the Railroad Commission of Texas in preventing waste thereof; and

Whereas, immediately upon the adjournment of said First Called Session of the Forty-second Legislature this Railroad Commission promulgated an order directing that a special hearing should be held in the City of Austin, Texas, on the 25th day of August 1931, to determine what field rules and regulations, if any should be prescribed, to carry out the policies underlying the new legislation, in the so-called East Texas field consisting of Upshur, Smith, Rusk and Gregg Counties, Texas. Pursuant to statutory notice, this hearing was held and evidence was offered tending to show that waste of crude petroleum oil and natural gas is now taking place or was taking place in said East Texas field as defined herein prior to and at the time of the shut-down of said field on or about the 17th day of August [fol. 714] 1931, and that waste of said oil and gas is threatened in said East Texas field in the respects hereinafter prescribed will prevent or tend to lessen the waste of said oil and gas in said field.

In the recently enacted legislation the Legislature of Texas has provided that waste shall not be construed to mean "economic waste"; and further that the Railroad

Commission of Texas "shall not have power to attempt by order or otherwise directly or indirectly to limit the production of oil to equal the existing market demand for oil." In view of this legislative mandate the Railroad Commission has deemed it improper to consider any evidence at the hearing which convened on August 25, 1931, and was concluded on August 28, 1931, dealing with economic conditions in the oil industry. Accordingly, at the hearing mentioned no evidence was heard or considered dealing with price or with the limitation of production with a view of stabilizing or raising the price of crude petroleum oil.

On consideration of all of the evidence adduced at said hearing the Railroad Commission of Texas is of the Opinion and so Finds and Orders that the following rules and regulations are reasonable and necessary and will prevent, or greatly minimize, the waste of crude petroleum oil and natural gas in the East Texas Field.

1. That present producing areas and extensions thereof in the counties of Gregg, Upshur, Smith and Rusk, Texas, shall constitute and be known as the "East Texas field."

2. It appearing from the evidence that the spacing of wells in said East Texas field, under the terms and provisions of the Railroad Commission's oil and gas conservation Rule 37 threatens to cause actual physical waste due [fol. 715] to the too rapid dissipation of gas energy in the production of oil and also due to the too rapid encroachment of water, that in the interest of preventing actual physical waste of oil and gas in said East Texas field, it is desirable to modify said Rule as applied to said field. Therefore, it is here now ordered by the Railroad Commission that said Rule 37, insofar as it applies to the East Texas field, be modified and the following rule is provided: "No well for oil or gas shall hereafter be drilled nearer than 660 feet to any other completed or drilling well on the same or adjoining tracts of land and no well shall be drilled nearer than 330 feet to any property line; provided, that the Commission, in order to prevent waste and to protect vested rights, shall and will grant exceptions permitting drilling within shorter distances as above described upon application filed fully stating the facts, statutory notice thereof having first been given to all adjacent lessees or operators thereof; and provided further that this modification of

Rule 37 shall not be applied against wells already begu
or offsets thereto." It is not the intention of the Railroa
Commission to repeal Rule 37 by this order, but only t
provide a special rule applicable only in said East Texa
field.

3. All wells hereafter completed in said East Texas fiel
shall be equipped with and produced through tubing of no
more than two and one-half (2½) inches in diameter, an
be bottomed not higher than the top of the producing o
sand. All wells heretofore completed and not tubed sha
be tubed in accordance with the provisions of this orde
immediately after this order becomes effective. All flowin
wells in said East Texas field shall also be equipped wit
adequate choke devices.

[fol. 716] 4. Evidence having been offered showing tha
there is a water table underlying the western side of sai
East Texas field and that some wells are now producing sa
water, and that there is a threatened further intrusion o
said salt water, therefore, it is here now ordered by th
Commission that within five (5) days after this order be
comes effective the owners of every well in said East Texa
field now producing salt water shall plug same back b
filling said hole with cemtn- to such a point that the botto
of the hole will be at least ten (10) feet above the wate
table, if the thickness of the sand will permit, and if an
well hereafter shall produce salt water the owner thereo
shall immediately plug same off in like maner. All pluggin
work required hereunder shall be subject to the supe
vision and approval of the deputy oil and gas supervisor i
charge. It shall further be the duty of said deputy oil an
gas supervisor in said field to make constant investigation
to determine what wells are producing salt water and to se
that the owners of all wells producing salt water compl
with the requirements hereof.

5. It appearing from the evidence that actual physica
waste has probably resulted in said East Texas field b
the drilling of wells to a depth below the water table, or to
near the water table: It is, therefore, ordered that hereafte
no well shall be drilled into the producing oil sand more tha
two-thirds (2/3rd) of the distance from the top of the san
to the known water level. Immediately upon the completio
of any well hereafter completed the owner or operato

thereof shall advise the deputy oil and gas supervisor in whose territory the well is located, the exact depth of such well and the depth into which said oil sand was penetrated, [fol. 717] and no person shall be permitted to operate any well not completed in conformity herewith.

6. The Legislature of Texas in the recently enacted conservation statute has provided that the operation of any oil well with the gas-oil ratio exceeding that fixed by the Railroad Commission shall be regarded as waste. The Railroad Commission is in full accord with the policy thus announced. On several occasions it has requested the enactment of such legislation and now desires to do everything in its power to carry out the legislative will. The evidence offered at the hearing, however, insofar as it dealt with the oil-gas ratios in the East Texas field was very meager and unsatisfactory. It appears that the operators in said field have not made accurate and reliable tests to determine the gas-oil ratios of their wells and have not kept adequate and accurate records. The Railroad Commission feels that further investigation must be made under its supervision before it can prescribe any comprehensive and adequate regulation dealing with gas-oil ratios in said field. Accordingly, it is here ordered that it shall be the duty of the Railroad Commission's Agents and employees in the East Texas field to immediately begin the collection of data relating to gas-oil ratios and it shall be the duty of the owner or operator of each well in said field to furnish all information and data that may be requested by any agent or representative of said Railroad Commission, and further, shall equip his well or wells with necessary equipment for metering gas and taking pressures as, if, and when required by the Railroad Commission.

The Railroad Commission, while believing, as above indicated, that the evidence offered at said hearing is not [fol. 718] sufficient for an order fixing an oil-gas ratio for the oil wells in said fields, yet feels that there was evidence suggesting that the Commission should do something to prevent as far as possible, the wasteful utilization of gas energy in the production of oil, while the Commission is conducting its investigation as provided for herein. Evidence was offered before the Commission tending to show that the best results up to date in the use of gas energy have been obtained when the oil wells in said East Texas field

were producing at the rate of between 200 and 300 barrels of oil per day.

It is, therefore, ordered by the Railroad Commission that the production of oil from each and every well in said East Texas field shall be limited to 225 barrels in any one day for the period of time covered by this order or until the Railroad Commission has completed its investigation work in said field and has promulgated such further orders as may be deemed necessary to secure a proper and efficient use of the gas energy in the production of oil in said field. Provided further that no operator shall be permitted to arbitrarily close his wells or any well down for one day or more and later undertake to produce said well or wells at a rate above 225 barrels sufficient to make up for the oil not produced when said well or wells were arbitrarily shut down, but in case a well or wells are unavoidably shut down for a period of one day or more, then the Commission may, in its discretion, grant a special concession to permit such producer to make up his daily average in production. Provided, however, that no well shall be permitted to produce with a gas-oil ratio in excess of 700 cubic feet of gas per barrel of oil.

[fol. 719] 7. No air or gas lift artificially applied shall be used in the East Texas oil field.

8. No well shall be permitted to clean itself and begin the flow of oil into or upon the derrick or derrick floor and in cleaning itself it shall be through a choke and an outlet shall be provided with a terminus into a pit at least 40 feet from the edge of the derrick floor or from any building, tank, or other structure which might constitute a fire hazard.

9. Each well shall be equipped with a blow-out preventer before drilling into the oil producing sand.

10. No boiler or electric generator shall be placed nearer than 150 feet to any producing well and before any well is brought into production boilers shall be moved back to conform to this rule.

11. All wells shall be completed in the daylight hours before sunset.

12. No well shall be brought into production until a duly authorized agent of the Commission shall issue a permit to the effect that such well has been properly completed and

equipped in accordance with the rules and regulations of the Commission. However, such permit shall not be required or shall be waived if, after 72 hours after written notice to said agent, inspection is not made.

13. All conservation rules of the Railroad Commission heretofore promulgated from time to time, applicable in the East Texas Field, shall still be enforceable unless in conflict herewith. This does not include former proration orders in said field.

14. The terms "Commission" and "Railroad Commission" as used in this order shall mean the Railroad Com- [fol. 720] mission of Texas. And, further, the terms "Supervisor", "Deputy Supervisor", "agents", "Employees", etc., as used in this order shall mean employees of the Railroad Commission of Texas only.

15. Nothing contained in this order shall be construed to relieve any party, any common pipeline carrier, or any common purchaser from the duties and obligations imposed by Chapter 36, page 17 of the Acts of the Forty-first Legislature at its Fifth Called Session, commonly known as the "common purchasers act", and all amendments thereto including an act passed by the First Called Session of the Forty-second Legislature, commonly referred to as H. B. 19, nor to modify or change any provisions of said acts.

16. This order shall become effective at 7 a. m., September 5, 1931, and shall remain in full force and effect until 7 a. m., October 31, 1931, unless repealed, changed or modified by the Railroad Commission of Texas at an earlier date. It is distinctly understood that this cause is held open on the docket during said period and the Railroad Commission shall have the right and power to set aside, change or modify said order in any respect, based upon evidence which was adduced at the hearing in Austin on August 25, 1931 to August 28, 1931, inclusive, without further notice.

C. V. Terrell, Chairman, Railroad Commission of Texas; Lon A. Smith, Member Railroad Commission of Texas; Pat M. Neff, Member Railroad Commission of Texas.

Attest: C. F. Petet, Secretary Railroad Commission of Texas. (Seal.) s/

[fol. 721] STATE OF TEXAS,
County of Travis:

I, C. F. Petet, Secretary of the Railroad Commission of the State of Texas, do hereby certify that the attached order described as follows:

Order of the Railroad Commission of Texas dated September 2nd, 1931, entitled: "Special Order Fixing Rules and Regulations for the Prevention of Physical Waste of Crude Petroleum Oil and Natural Gas in what is Known as the East Texas Field Composed of Upshur, Smith, Rusk, and Gregg Counties, Texas"

is a true and correct copy of the original order now on file in the Railroad Commission, and in my custody as Secretary and Custodian of the files of the Railroad Commission.

Witness my hand and seal of the Railroad Commission of Texas, this the 31st day of January, 1940.

(Signed) C. F. Petet, Secretary. (Seal.)

Endorsed: Nos. 31, 36 and 46 Civil. Filed 16th day of Feb., 1940. Maxey Hart, Clerk. (Signed) By J. E. Davis, Deputy. Pltffs. Ex. 34.

[fol. 722] PLAINTIFFS' EXHIBIT No. 35

Railroad Commission of Texas

Oil and Gas Division

Oil and Gas Docket Nos. 108, 120, 123, 124, 125, 126, 128, 129, 132 & 146

In re: Conservation and Prevention of Waste of Crude Petroleum and Natural Gas in the State of Texas.

Austin, Texas, March 23, 1936.

Special Order Fixing the Allowable Production of Crude Oil in the Various Fields and Districts in Texas

Whereas, After due notice hearings have been held at Austin, Texas, at various times, including hearing on March 18, 1936, with respect to the existence and imminence of waste of oil and gas in the state of Texas, and the prevention thereof; and

Whereas, In view of the evidence, including among other matters the physical conditions in the various fields, the transportation and marketing facilities, the reasonable mar-

ket demand, the reasonableness of the allocation as between fields of the allowable production under previous orders; and

Whereas, The Railroad Commission of Texas finds from the evidence that the reasonable market demand for oil produced in this State from the various fields and districts therein equals the amount hereinafter shown as the allowable production thereof during the period beginning at 7 o'clock a. m., April 1, 1936, and ending at 7 o'clock a. m., May 1, 1936; and

Whereas, The Railroad Commission of Texas finds that waste exists or is imminent and that to prevent such waste of oil and gas, as the same is defined by the applicable [fol. 723] Statutes, it is necessary to restrict the production of oil in the state of Texas as provided for herein, and

Whereas, The Railroad Commission's Special Order fixing Allowable Production of Crude Oil in the Various Fields and Districts in Texas, dated August 26, 1935, contains the following language:

"We further find from the evidence the more wells that are drilled the greater will be the ultimate recovery of oil and gas from any given pool."

By this language the Commission did not mean and did not find from the evidence that the closer wells are drilled the greater will be the ultimate recovery of oil and gas from any given pool, but by such language only meant and found from the evidence that the more wells that are drilled in conformity with the spacing rules as applicable to the various fields in Texas the greater will be the ultimate recovery of oil and/or gas from any given pool.

It was not then the intention and it is not now the intention of the Railroad Commission to abrogate or abandon any of the spacing rules now in effect and applicable to the various oil and gas fields in Texas, nor to militate against the fact basis on which the Commission's spacing rules are based.

Now, Therefore, In order to prevent the waste of oil and gas in the state of Texas, which will take place by authorizing production over the said period in excess of the reasonable market demand:

[fol. 724] It Is Hereby Ordered, That beginning at 7 o'clock a. m., Wednesday, April 1, 1936, and continuing to

May 1, 1936; unless other periods are prescribed herein, the production of oil in the state of Texas, and the various fields therein, until further ordered, shall not exceed the amounts hereinafter shown as the allowable production thereof, and in order to adjust the current allowable production of crude oil in Texas, as nearly as may be, to the demand as shown, the allowable daily production of the various fields and districts in said State shall be limited to the amounts hereinafter specified and the following orders fixing such limitation on production in the various fields and districts are hereby adopted.

1. Rule 2 of Division 2, as contained in an Order of this Commission dated October 17, 1933, pertaining to the Panhandle District of Texas is hereby readopted and amended as follows:

Rule 2. Not more than Sixty Thousand Eight Hundred (60,800) barrels of crude oil shall be produced from said district during any day of the effective period of this Order. Moore County shall not produce in excess of Fifteen Hundred (1500) bbl. per day. Moore County allowable is additional to Panhandle allowable. The Osborne Area in Wheeler County shall not produce in excess of One Thousand (1,000) barrels per day. The Osborne Area allowable is in addition to the Panhandle allowable.

2. Rule 23 (a) of Division 3, as contained in an Order of this Commission dated October 17, 1933, pertaining to the East Texas Field is hereby readopted and amended as follows:

Rule 23 (a). Whereas, The Railroad Commission of Texas finds from evidence submitted to it at a hearing held [fol. 725] in Austin, Texas, on March 18, 1936, and at previous hearings held before this regulatory body, that the reservoir of the East Texas Field has its energy supplied by a hydrostatic drive which encroaches from the west to the east, and only a certain amount of crude oil can be withdrawn daily from the East Texas reservoir in order to utilize to the greatest extent the energy necessary for the production and recovery of the greatest amount of oil ultimately from the reservoir. It has been recommended to the Commission by competent engineers that not more than 424,000 to 450,000 barrels of crude oil should be allowed to

be produced from the East Texas reservoir in any one day in order that the reservoir might be depleted with the least amount of waste incurring. Evidence was also submitted to the Commission at these hearings that the production of from 425,000 to 450,000 barrels of crude oil will prohibit the coning of water; the uneven encroachment of water, and the subsequent trapping of much oil that otherwise under higher daily allowables of crude oil, would not be recovered.

Therefore, It Is Further Ordered by the Railroad Commission of Texas, that during each twenty-four (24) hour period beginning at 7 o'clock a. m., Central Standard Time, April 1, 1936, the owner or operator or manager of each well in the East Texas Field shall be permitted, either collectively or individually, to produce daily from each well a maximum of Two Point Eighty Five (2.85%) Per Cent of its average hourly potential producing capacity as determined by the Commission.

3. Rule 2 of Division 5, as contained in an Order of this Commission dated October 17, 1933, pertaining to the North Texas District is hereby readopted and amended as follows:

Rule 2. Not more than Sixty Thousand (60,000) barrels [fol. 726] of crude oil shall be produced from said district during any day of the effective period of this Order. Foard County shall not produce in excess of Five Hundred (500) barrels daily. Foard County allowable is in addition to North Texas allowable.

4. Rule 2 of Division 5, as contained in an Order of this Commission dated October 17, 1933, pertaining to the West Central Texas District is hereby readopted and amended as follows:

Rule 2. Not more than Fifty Three Thousand and Eight (53,008) barrels of crude oil shall be produced from said District during any day of the effective period of this Order, which is distributed to the various counties as follows:

Brown	1727	Crockett (Todd)	10
Callahan	1596	Crockett (World)	1060
Coleman	1172	Eastland	2936
Comanche	74	Erath	112

Fisher	5875	Runnels	313
Haskell	18	Shackelford	6477
Irion	42	Stephens	4653
Jones	3653	Throckmorton	464
McCullough	1	Taylor	126
Palo Pinto	360	Upton (McCamey)	8782
Reagan (Big Lake)	9000	Young South/2	4323
Reagan (Grayson)	172	Webb-Ray	62

5. Rule 4 of Division 7, as contained in an Order of this Commission dated October 17, 1933, pertaining to the West Texas District is hereby readopted and amended as follows:

Rule 4. Not more than One Hundred Fifty Three Thousand Four Hundred Six (153,406) barrels of crude oil per day shall be produced from said District during any day of the effective period of this Order, which shall be distributed to the various fields therein as follows:

[fol. 727] Bashara	22	McKinzie	5
Brown-Altman	1389	Monroe	25
Church-Fields	6960	Netterville	99
Cowden, North	6350	Northwest	28
Cowden, South	400	Parker	50
Crane-Cowden	572	Pecos Valley	422
Deep Rock	350	Penwell	6718
Dobbs	100	Richards	10
Edwards	16	Sand Hills	240
Emperor	515	Sand Hills	
Foster	180	(Ordivician)	60
Fuhrmans	750	Sayre	4350
Goldsmith	414	Scarbrough	1885
Gulf-McElroy	4640	Sealey	535
Halley	149	Shipley	1580
Harper	96	Tobarg	2200
Hendricks	13815	Taylor-Link	1350
Howard-Glasscock	20000	Waddell	2012
Iaatna-E. Howard	4,800	Walker	10
Johnson	30	Ward, North	10,075
Keyes	100	Ward, South	14,170
Keystone	1268	Westbrook	867
Leck	500	Wheat	1,850
Masterson	211	White & Baker	3
Means	1466	Yates	38,837
McClintic	932		

6. Rule 2 of Division 4, as contained in an Order of this Commission dated October 17, 1933, pertaining to the East Central Texas District is hereby readopted and amended as follows:

Rule 2. Not more than Fifty Thousand Nine Hundred Fifty (50,950) barrels of crude oil per day shall be produced from said fields in said District during any day of the period of April 1, 1936, to May 1, 1936; said amounts shall be allocated to the various fields in the following amounts:

Bethany	16	Pottsboro	4
Boggy Creek	573	Rusk	225
Camp Hill	660	Richland	28
Cayuga	5274	Powell	2321
Curry	127	Rodessa	1200
Corsicana	411	South Bosque	11
East Freestone	8	Van	35,733
Long Lake	750	Van Shallow	153
Mexia	2187	Trinity	1,091
Post Oak	1	Wortham	95
Potter	70	Worthem (Shallow)	12

7. Rule 2 of Division 8, as contained in an Order of this Commission dated October 17, 1933, pertaining to the Southwest Texas District is hereby readopted and amended as follows:

Rule 2. Not more than One Hundred Forty Three Thousand Two Hundred Sixty Three (143,263) barrels of crude oil shall be produced in said District during any day of the effective date of this Order, and same shall be distributed as follows:

[fol. 728] Division I

Alta Vista	5	Chicon Lake	17
Bateman	206	Clark	500
Bob Rose	25	Cooksey	12
Buchanan	39	Darst Creek	8986
Callaham	148	Dale	160
Carroll	28	Dunlap	10
Cedar Creek	44	Eckert	269
Cedar Creek (N)	54	Espada Mission	1
Chapman-Abbott	333	Gas Ridge	8

Hilbig	791	Noack	325
Jones	0	Pearsall	1000
Jacobs	610	Schimmel-Batts	1
Kimbro Kimbro New	48	Somerset Southton	700 67
Larremore	40	Staples	3
Loma Alto	80	Taylor Ina	5
Lowe	0	Thrall	46
Luling-Branyon	5923	Salt Flat	4268
Lytton-Springs	371	Von Ormy	83
Manford	33	Yoast	50
Matthews	52	Zoborski	4
Meaders	0		
Minerva Rockdale	227		25,572

Division II

Caesar	1293	Placedo	2050
Coletta Creek	780	Pettus	1408
Diamond Half	80	Pettus (New)	1000
Dinero	92	Port Lavaca	700
Dirks	5280	Quintanna-O'Connor	3200
Fort Merrill	57	Ray	1831
Greta	14930	Refugio (Deep Sand)	111
Greta Deep	1180	Refugio (New)	2325
Keeran	300	Refugio (Old)	2520
McFadden	26	Hords Creek	90
Mauritz	150	Tuleta	1400
McNeil	122	Vanderbilt	100
Mineral	0	Worthington	74
Mt. Lucas	60	Whittington	6
Normanna	12		
O'Connor-McFadden	275		41,452

Division IV

Albercos	100	Clara Driscoll	150
Alworth	0	Cole East	32
Angelita	0	Cole West	593
Aviators	408	Cole Middle	56
Baldwin	874	Cuellar	114
Barbacosa	15	Comitas	10
Bruni	2200	Driscoll	360
Carolina-Tex	5	Eagle Hill	426
Charco Redondo	10	Escobas	1109

Gov't Wells (N)	11704	Piedras Pinta	0
Gov't Wells (S)	6021	Plymouth	8130
Guerra	412	Premont Prospect	0
Hagist	50	Randado	320
Henne-Winch-Farris	10	Rio Grande City	235
Hoffman	340	Roma	3
Jennings	655	Corpus Christi	4306
Kingsville	60	Sinton	10
Kohler	97	Seven Sisters	3500
Laurel	40	S. R. C.	26
Loma Novia	11970	Sam Fordyce	5126
Loma Vista	75	Sarnosa	957
Lopez	2520	Saxet (Old)	2195
Los Olmos	146	Saxet (New)	6180
Mercedes	140	South Clarkwood	20
Mirando City	351	Taft	300
Mirando Valley	32	[fol. 729]	
Moca	666	White Point	20
O'Hern	2800		
Piedra Lumbre	360		76,239

8. Rule 2 of Section A, Division 8, as contained in an Order of this Commission dated October 17, 1933, pertaining to the Gulf Coast District is hereby readopted and amended as follows:

Rule 2. Not more than One Hundred Seventy-nine Thousand and Thirty-four (179,034) barrels of crude oil shall be produced from said fields of said district during any day of the effective period of this Order, which shall be distributed to said fields as follows:

Allen Dome	16	Buckeye	218
Amelia	150	Clay Creek	1133
Anahuac	5900	Cleveland	962
Ariola	1375	Conroe	46025
Batson	743	Damon Mound	497
Batson (New)	1497	Dickinson	1565
Barbers Hill	17200	Esperson Dome	1340
Bay City	750	Fannett	1013
Big Creek	1006	Goose Creek	3053
Blue Ridge	1555	Gillock	Shut-in
Boling	735	High Island	6780
Brenham	19	Hankamer	1801
Brookshire	15	Hankamer (New)	587

Hardin	365	Pierce Junction	3315
Hastings	5900	Pierce Junction (Vicksburg)	70
Hull (Old)	2915	Raccoon Bend	2883
Hull (New)	2710	Raccoon Bend (Cockfield)	3000
Humble	3430	Rockland	0
Lost Lake	200	Saratoga	973
Louise	1540	Schwab	60
Livingston	3188	Shepherd's Mott	9
Manvel (Miocene)	5000	South Houston	1425
Manvel (Oligocene)	4500	Sugarland	5580
Markham	1371	Sour Lake	1572
Mykawa	229	South Liberty	646
Mykawa (New)	3927	Spindletop	2507
Nash Dome	36	Thompson	10738
North Dayton	133	Tomball	7500
Old Ocean	424	Turtle Bay	300
Orchard	628	West Columbia	2340
Orange	680	Withers	150
Port Neches	1805		
Pickett Ridge	1050		

It Is Further Ordered That allowable oil in the foregoing Order is oil measured on 100 per cent tank tables according to the Pipe Line Rule Number Nine (9) and corrected to sixty (60) degrees Fahrenheit.

[fol. 730] It Is Further Ordered That this Cause be held open on the Docket for such further orders as may be necessary and supported by evidence of record in above Cause.

Railroad Commission of Texas, Ernest O. Thompson, Chairman, C. V. Terrell, Commissioner, Lon A. Smith, Commissioner. (Seal.)

Attest: C. F. Petet, Secretary.

STATE OF TEXAS,
County of Travis:

I, C. F. Petet, Secretary of the Railroad Commission of Texas, do hereby certify that the attached order of the Railroad Commission of Texas, described as follows:

Order dated March 23rd, 1936 entitled "Special order fixing the Allowable Production of Crude Oil in the Various Fields and Districts in Texas,-

is a true and correct copy of the original now on file in this office as revealed by the records of this office, and in my custody as secretary and custodian of the files of the Railroad Commission of Texas.

Witness my hand and the seal of the Railroad Commission of Texas, this the 7th day of August, A. D., 1939.

(Signed) C. F. Petet, Secretary. (Seal.)

Endorsed: Nos. 31, 36 and 46 Civil. Filed 16th day of Feb., 1940. Maxey Hart, Clerk. (Signed) By J. E. Davis, Deputy. Pltffs. Ex. 35.

[fol. 731] PLAINTIFFS' EXHIBIT No. 36

Railroad Commission of Texas

Oil and Gas Division

Oil and Gas Docket Nos. 108, 120, 123, 124, 125, 126, 128, 129, 132 & 146

In re: Conservation and Prevention of Waste of Crude Petroleum and Natural Gas in the State of Texas

Austin, Texas, February 24, 1936.

Special Order Fixing the Allowable Production of Crude Oil in the Various Fields and Districts in Texas

Whereas, After due notice hearings have been held at Austin, Texas, at various times, including hearing on February 18, 1936, with respect to the existence and imminence of waste of oil and gas in the State of Texas, and the prevention thereof; and

Whereas, In view of the evidence, including among other matters the physical conditions in the various fields, the transportation and marketing facilities, the reasonable market demand, the reasonableness of the allocation as between fields of the allowable production under previous orders; and

Whereas, The Railroad Commission of Texas finds from the evidence that the reasonable market demand for oil produced in this State from the various fields and districts therein equals the amount hereinafter shown as the allowable production thereof during the period beginning at 7

o'clock a. m., March 1, 1936, and ending at 7 o'clock a. m., *Par*il 1, 1936; and

Whereas, The Railroad Commission of Texas finds that waste exists or is imminent and that to prevent such waste of oil and gas, as the same is defined by the applicable Statutes, it is necessary to restrict the production of oil in the state of Texas as provided for herein, and

[fol. 732] Whereas, The Railroad Commission's Special order Fixing Allowable Production of Cr*du*e oil in the Various Fields and Districts in Texas, dated August 26, 1935, contains the following language:

"We further find from the evidence the more wells that are drilled the greater will be the ultimate recovery of oil and gas from any given pool".

By this language the Commission did not mean and did not fmd from the evidence that the closer wells are drilled the greater will be the ultimate recovery of oil and gas from any given pool; but by such language only meant and found from the evidence that the more wells that are drilled in conformity with the spacing rules as applicable to the various fields in Texas the greater will be the ultimate recovery of oil and/or gas from any given pool.

It was not then the intention and it is not now the intention of the Railroad Commission to abrogate or abandon any of the spacing rules now in effect and applicable to the various oil and gas fields in Texas, nor to militate against the fact basis on which the Commission's spacing rules are based.

Now, Therefore, In order to prevent the waste of oil and gas in the state of Texas, which will take place by authorizing production over the said period in excess of the reasonable market demand:

It Is Hereby Ordered, That beginning at 7 o'clock a. m., Sunday, March 1, 1936, and continuing to April 1, 1936; unless other periods are prescribed herein, the production of oil in the state of Texas, and the various fields therein, until further ordered, shall not exceed the amounts hereinafter shown as the allowable production thereof, and in [fol. 733] order to adjust the current allowable production of crude oil in Texas, as nearly as may be, to the demand as shown, the allowable daily production of the various fields and districts in said State shall be limited to the amounts

hereinafter specified and the following orders fixing such limitation on production in the various fields and districts are hereby adopted.

1. Rule 2 of Division 2, as contained in an Order of this Commission dated October 17, 1933, pertaining to the Panhandle District of Texas is hereby readopted and amended as follows:

Rule 2. Not more than Fifty Eight Thousand and Eight Hundred (58,800) barrels of crude oil shall be produced from said district during any day of the effective period of this Order. Moore County shall not produce in excess of Fifteen Hundred (1500) barrels per day. Moore County allowable is additional to Panhandle allowable. The Osborne Area in Wheeler County shall not produce in excess of One Thousand (1,000) barrels per day. The Osborne Area allowable is in addition to the Panhandle allowable.

2. Rule 23 (a) of Division 3, as contained in an Order of this Commission dated October 17, 1933, pertaining to the East Texas Field is hereby readopted and amended as follows:

Rule 23 (a). Whereas, The Railroad Commission of Texas finds from evidence submitted to it at a hearing held in Austin, Texas, on February 18, 1936, and at previous hearings held before this regulatory body, that the reservoir of the East Texas Field has its energy supplied by a hydrostatic drive which encroaches from the west to the east, and only a certain amount of crude oil can be withdrawn daily from the East Texas reservoir in order to utilize to the [fol. 734] greatest extent the energy necessary for the production and recovery of the greatest amount of oil ultimately from the reservoir. It has been recommended to the Commission by competent engineers that not more than 425,000 to 450,000 barrels of crude oil should be allowed to be produced from the East Texas reservoir in any one day in order that the reservoir might be depleted with the least amount of waste incurring. Evidence was also submitted to the Commission at these hearings that the production of from 425,000 to 450,000 barrels of crude oil will prohibit the coning of water; the uneven encroachment of water, and the subsequent trapping of much oil that otherwise, under higher daily allowables of crude oil, would not be recovered.

Therefore, It Is Further Ordered by the Railroad Commission of Texas, that during each twenty-four (24) hour period beginning at 7 o'clock a. m., Central Standard Time, March 1, 1936, the owner or operator or manager of each well in the East Texas Field shall be permitted, either collectively or individually, to produce daily from each well a maximum of Two Point Eighty Five (2.85%) Per Cent of its average hourly potential producing capacity as determined by the Commission.

3. Rule 2 of Division 5, as contained in an Order of this Commission dated October 17, 1933, pertaining to the North Texas District Is hereby readopted and amended as follows:

Rule 2. Not more than Fifty Eight Thousand Five Hundred (58,500) barrels of crude oil shall be produced from said district during any day of the effective period of this order. Foard County shall not produce in excess of Five Hundred (500) Barrels Daily Foard County Allowable is additional to North Texas allowable.

[fol. 735] 4. Rule 2 of Division 5, as contained in an Order of this Commission dated October 17, 1933, pertaining to the West Central Texas District is hereby readopted and amended as follows:

Rule 2. Not more than Fifty Thousand Six Hundred Fifteen (50,615) barrels of crude oil shall be produced from said District during any day of the effective period of this Order, which is distributed to the various counties as follows:

Brown	1761	McCullough	6
Callahan	1556	Palo Pinto	382
Coleman	1165	Reagan (Big Lake)	8020
Comanche	74	Reagan (Grayson)	172
Crockett (Todd)	10	Runnels	370
Crockett (World)	1060	Shackelford	6443
Eastland	3060	Stephens	4691
Erath	112	Throckmorton	453
Fisher	5423	Taylor	129
Haskell	18	Upton (McCamey)	7782
Irion	47	Young South/2	4503
Jones	3338	Webb-Ray	40

5. Rule 4 of Division 7, as contained in an Order of this Commission dated October 17, 1933, pertaining to the West

Texas District is hereby readopted and amended as follows:

Rule 4. Not more than One Hundred Forty Seven Thousand Nine Hundred Sixty Five (147,965) barrels of crude oil per day shall be produced from said District during any day of the effective period of this Order, which shall be distributed to the various fields therein as follows:

Bashara	102	Monroe	25
Brown-Altman	371	Netterville	15
Church-Fields	6960	Northwest	28
Cowden, North	4350	Parker	50
Cowden, South	400	Pecos Valley	372
Crane-Cowden	572	Penwell	6,718
Deep Rock	300	Richards	10
Dobbs	100	Sand Hill (Ordivician)	150
Edwards	–0–	Sand Hills	54
Emperor	415	Sayre	3650
Foster	100	Scarbrough	1875
Fuhrmans	750	Sealey	535
Goldsmith	400	Shipley	1580
Gulf-McElroy	4640	Snyder	–0–
Halley	149	Taylor-Link	1350
Harper	96	Tobarg	1825
Hendricks	14,600	Ward, North	12,000
Howard-Glasscock	20,000	Ward, South	12,245
Iaatan E. Howard	4,449	Waddell	1,528
Johnson	30	Walker	10
Keystone	1,168	Westbrook	867
Leck	500	Wheat	1,850
Masterson	211	White & Baker	3
McClintic	932	Yates	38,435
McKinzie	10		
Means	1,185		

[fol. 736] 6. Rule 2 of Division 4, as contained in an Order of this Commission dated October 17, 1933, pertaining to the East Central Texas District is hereby readopted and amended as follows:

Rule 2. Not more than Fifty Thousand Two Hundred Twenty-Five (50,225) barrels of crude oil per day shall be produced from said fields in said District during any day of the period of March 1, 1936, to April 1, 1936; said

amounts shall be allocated to the various fields in the following amounts:

Bethany	16	Pottsboro	4
Boggy Creek	573	Powell	2332
Camp Hill	675	Richland	28
Cayuga	5104	Rodessa	500
Curry	131	Rusk	300
Corsicana	434	South Bosque	11
East Freestone	10	Trinity	1,085
Long Lake	750	Van	35,733
Mexia	2197	Van Shallow	164
Post Oak	1	Wortham	95
Potter	70	Wortham (Shallow)	12

7. Rule 2 of Division 8, as contained in an Order of this Commission dated October 17, 1933, pertaining to the Southwest Texas District is hereby readopted and amended as follows:

Rule 2. Not more than One Hudnred Thirty Two Thousand One Hundred Fifty Nine (132,159) barrels of crude oil shall be produced in said District during any day of the effective date of this Order, and same shall be distributed as follows:

[fol. 737] Division I

Alta Vista	5	Hilbig	791
Bateman	206	Jones	0
Bob Rose	35	Jacobs	595
Buchanan	41	Kimbro / Kimbro (New)	47
Callahan	146		
Carroll	28	Larremore	48
Cedar Creek	52	Loma Alto	80
Cedar Creek (n)	26	Lowe	0
Chapman-Abbott	344	Luling-Branyon	5550
Chicon Lake	17	Lytton-Springs	377
Clark	235	Manford	30
Cooksey	13	Matthews	51
Darst Creek	8968	Meaders	0
Dale	160	Minerva Rockdale	220
Dunlap	10	Noack	314
Eckert	276	Pearsall	550
Espada Mission	1	Salt Flat	4173
Gas Ridge	8	Schimmel-Batts	1

Somerset	700	Von Ormy	80
Southton	67	Yoast	55
Staples	3	Zoborski	10
Taylor Ina	7		
Thrall	46		24,366

Division II

Caesar	1263	O'Connor-McFadden	275
Coletta Creek	693	Placedo	1902
Diamond Half	0	Pettus	1521
Dinero	135	Pettus (New)	1000
Dirks	5040	Port Lavaca	850
Fort Merrill	170	Quintanna-O'Connor	3000
Greta	14930	Ray Refugio (Deep	
Greta Deep	1180	Sand)	99
Hords Creek	68	Refugio (New)	2250
Keeran	300	Refugio (Old)	2520
Mauritz	150	Tuleta	1548
McFadden	32	Vanderbilt	10
McNeil	175	Whittington	1
Mineral	0	Worthington	76
Mt. Lucas	60		
Normanna	12		41,041

Division IV

Albercos	100	Escobas	1160
Alworth	0	Gov't Wells (N)	11792
Angelita	0	Gov't Wells (S)	6024
Aviators	408	Guerra	412
Baldwin	874	Hagist	110
Barbacosa	15	Henne-Winch-Faris	10
Bruni	2200	Hoffman	40
Carolina-Tex	5	Jennings	635
Charco Redondo	10	Kingsville	56
Clara Driscoll	150	Kohler	115
Cole East	32	Laurel	39
Cole Middle	56	Loma Novia	9975
Cole West	608	Lopez	1750
Corpus Christi	1718	Loma Vista	75
Cuellar	120	Los Olmos	137
Comitas	6	Mercedes	165
Driscoll	320	Mirando City	369
Eagle Hill	425	Mirando Valley	35

Moca	666	S. R. C.	53
O'Hern	2625	Sam Fordyce	4686
Piedra Lumbre	200	Sarnosa	957
Piedras Pintas	9	Saxet (Old)	2528
Plymouth	6790	Saxet (New)	4967
Premont Prospect	0	South Clarkwood	20
Randado	322	Taft	150
Rio Grande City	240	White Point	20
Roma	3		
Sinton	50		66,752
Seven Sisters	2520		

[fol. 738] 8. Rule 2 of Section A, Division 8, as contained in an Order of this Commission dated October 17, 1933, pertaining to the Gulf Coast District is hereby readopted and amended as follows:

Rule 2. Not more than One Hundred Sixty Eight Thousand Seven Hundred Seventy Four (168,774) barrels of oil shall be produced from said fields of said District during any day of the effective period of this Order, which shall be distributed to said fields as follows:

Allen Dome	15	High Island	6780
Anahuac	5000	Hankamer	1603
Ariola	1375	Hankamer (New)	491
Barbers Hill	17200	Hardin	365
Batson	729	Hastings	5200
Batson (New)	1236	Hull (Old)	2825
Bay City	500	Hull (New)	2846
Big Creek	1043	Humble	3430
Blue Ridge	1675	Lost Lake	260
Boling	870	Louise	1540
Brenham	18	Livingston	3100
Brookshire	15	Manvel (Miocene)	4000
Buckeye	174	Manvel (Oligocene)	3500
Clay Creek	1133	Markham	1105
Cleveland	853	Mykawa	280
Conroe	44025	Mykawa (New)	3847
Damon Mound	482	Nash Dome	38
Dickinson	1465	North Dayton	142
Esperson Dome	1340	Old Ocean	424
Fannett	973	Orchard	675
Goose Creek	2745	Orange	690
Gillock	(Shut in)	Pickett Ridge	900

Pierce Junction	3279	South Houston	1153
Pierce Junction (Vicksburg)	70	Sugarland	5580
Port Neches	1805	Sour Lake	1577
Raccoon Bend	2883	South Liberty	685
Raccoon Bend (Cockfield)	1931	Spindletop	2377
Rockland	0	Thompson	10738
Saratoga	839	Tomball	6250
Schwab	60	Turtle Bay	150
		West Columbia	2340
		Withers	150

It is Further Ordered That allowable oil in the foregoing Order is oil measured on 100 per cent tank tables according to the Pipe Line Rule Number Nine (9) and corrected to sixty (60) degrees Fahrenheit.

It is Furthered Ordered That this Cause be held open on the Docket for such further orders as may be necessary and supported by evidence of record in above cause.

Railroad Commission of Texas, Ernest O. Thompson, Chairman; C. V. Terrell, Commissioner; Lon A. Smith, Commissioner.

Attest: C. F. Petet, Secretary. (Seal.)

[fol. 739] State of Texas,
County of Travis:

I, C. F. Petet, Secretary of the Railroad Commission of Texas, do hereby certify that the attached order of the Railroad Commission of Texas, described as follows:

Order dated February 24th, 1936 entitled "Special Order Fixing the Allowable Production of Crude Oil in the Various Fields and District in Texas"

is a true and correct copy of the original now on file in this office as revealed by the records of this office, and in my custody as secretary and custodian of the files of the Railroad Commission of Texas.

Witness my hand and the seal of the Railroad Commission of Texas, this the 7th day of August, A. D., 1939.

(Signed) C. F. Petet, Secretary.

[Endorsed:] Nos. 31, 36 & 46 Civil, Plaintiffs' Exhibit No. 36. Files 16th day of February, 1940. Maxey Hart, Clerk. By J. E. Davis, Deputy.

[fol. 740] PLAINTIFFS' EXHIBIT No. 37

East Texas Field

Operator ..... Lease .....

1. How many wells are on this lease?

2. How many acres are in this lease?

3. What is the average thickness of the saturated Woodbine sand under this lease?

4. What is the average percent porosity of the oil saturated section of the Woodbine Sand under this lease?

5. What is the average permeability of the oil saturated section of the Woodbine Sand under this lease?

6. What is the average percent connate water in the Woodbine Sand under this lease?

7. What is the percent of Shale in the Woodbine Sand under this lease?

8. What do you estimate to be the original reserve of recoverable oil in the Woodbine Sand under this lease?

9. What do you estimate to be the present reserve of recoverable oil in the Woodbine Sand under this lease?

[fol. 741] 10. How many barrels of oil have been produced from the wells located on this lease?

11. What do you estimate to be the reserve of recoverable oil in the East Texas Field at the present time?

12. What do you think the total allowable for the wells on this lease should be in order that you might recover your fair share of oil in the East Texas Field, if the total allowable of the East Texas Field remains as it is at this time?

$$\frac{9{,}000}{4{,}173{,}933} \times \text{field allowable} = \text{lease allowable}$$

Pressure factor may also be considered. See covering letter.

13. Remarks:

NOTE. Please give number of acres in lease and general location of same on structure.

[fol. 742] PLAINTIFFS' EXHIBIT No. 38

August 8, 1939

Honorable John E. Taylor, Chief Supervisor, Oil & Gas Division, Railroad Commission, Austin, Texas

DEAR MR. TAYLOR:

In compliance with your request, we enclose to you herewith our answers to your questionnaire relating to the several leases which the Humble Company owns or operates in the East Texas Field. We have given the answers to the best of our ability in view of the limited amount of time at our disposal, and believe that the answers are correct.

You will notice that in answer to Questions 8, 9, and 11, we have answered in terms of acre-feet of sand. We thought it preferable to give this sort of an answer for the following reasons: Competent petroleum engineers and geologists will agree fairly well concerning the amount of oil per acre-feet in place in the East Texas Field. The percentage of the oil which can be recovered per acre-foot depends upon the manner in which the field is operated. If a proper allowable for the field and ratable production are maintained, a higher -ate of recovery per acre-foot could reasonably be expected than if the allowable for the field is excessive, or if excessive concentrated withdrawals are permitted. The opinions of competent petroleum engineers and geolo-[fol. 743] gists may vary as to what the actual recovery per acre-foot in the field will be in the future, because of their differences in assumptions as to the conditions under which the field may hereafter be operated.

In answer to Question 12, we have suggested the following formula:

$$\frac{\text{Acre-feet of oil sand in lease}}{\text{Acre-feet of oil sand in field}} \times \text{field}$$

allowable. It is to be understood, however, that it may be entirely proper to apply the pressure factor or to consider the location of the lease on structure. There are other formulae which would probably give substantially the same result. It is our idea that whatever the formula may be, the object should be to prevent reasonably avoidable drainage between competing properties, which drainage is not substantially offset by counter drainage.

Whatever its legal rights may be, the Humble Company, as a practical matter, would offer no objection to an order applying the formula mentioned above or another formula achieving substantially the same result and, in connection therewith, prescribing a reasonable minimum unit allowable.

Yours very truly, Rex G. Baker.

RGB-H.
Encl.

[fol. 744] DEFENDANTS' EXHIBIT No. 8

Humble Oil & Refining Company
East Texas Field

Lease	Acres	Potential	Allowable
Adams	70.00	1,485	165.83
Alexander	25.00	345	26.32
Armstrong	155.70	29,405	1,067.77
Arnold, J. E	43.50	1,430	123.70
Arnold, J. H	81.00	10,590	460.80
Bagwell, B. J	40.70	5,700	88.26
Barksdale, R. A. "A"	72.80	6,420	315.36
Barksdale, R. A. "B"	80.00	2,970	263.01
Barton, L	62.20	8,550	378.15
Barton, T	49.70	4,165	314.82
Bell, John	65.50	9,747	399.14
Blackwell, O	74.40	10,765	374.75
Blackwell, A. D	245.79	53,931	1,731.76
Bowles, J. F	100.50	17,270	724.29
Box, J. R	165.70	23,705	980.83
Brightwell, C. A	44.90	6,950	252.32
Caldwell, M. D	73.10	11,600	468.66
Cameron, R. T	50.00	4,651	189.17
Carlton School	4.00	600	25.40
Carter, A	90.20	16,880	713.46
Castleberry, H	110.00	2,840	241.41
Christian, L	36.30	8,485	332.68
Clements, C. C	75.20	5,175	266.67
Clements, E. W	50.00	10,685	402.37
Crim, L. D	914.51	161,133	6,098.31
DeGuerin, Lulu	12.00	1,885	73.11
Dennis, Sol	73.15	11,166	471.71
Edwards, Ethel	73.30	9,700	446.58
Edwards, J. K	267.10	32,096	1,424.96
Elliott, J. R	13.50	1,795	72.75
First State Bank	80.60	11,100	389.50
Florey, J. D. "A"	79.50	13,620	543.65
Florence Heirs	16.00	4,125	130.92
Fuller, J	115.66	17,185	623.36

DEFENDANTS' EXHIBIT No. 8—Continued

Lease	Acres	Potential	Allowable
Gramling, R. P. alc	131.44	3,270	119.50
Glover, J. E	131.00	15,997	683.15
Glover, S. A	58.00	2,085	166.94
Gray, J. C	12.50	480	41.34
Guerin, P. R	129.50	21,860	871.93
Harris, T. B. & T. D	175.18	21,265	841.28
Hedge, C. H	7.82	180	8.40
Hill, Leah	55.30	7,025	299.44
Holland, W. W	206.40	36,614	1,433.43
Holt, E. S	51.43	8,150	321.32
Holt, Ida "A"	32.62	4,005	148.85
Holt, Ida "B"	91.45	12,960	533.99
[fol. 745]			
Holt, Ida "C"	99.00	10,705	448.73
Holt, O. R	41.25	6,440	259.54
Hughes, A. L	91.00	18,590	734.41
Hughes, W. R	245.31	38,230	1,437.42
Joyner, D. C	59.14	4,985	202.75
Joyner, D. C. "B"	7.50	1,250	44.98
Joyner, M	20.55	1,295	67.70
Johnston, D. "A"	88.13	10,815	397.05
Johnston, D. "B"	57.80	9,425	318.92
Johnson, G. W	97.15	21,830	771.79
Kangerga, M. & R. "A"	312.00	49,860	2,055.61
Kangerga, M. & R. "B"	124.60	11,180	505.46
Kee, W. B	95.38	11,645	408.98
Killingsworth, Mattie	99.70	19,160	860.12
Knowles, J. A	101.65	9,760	624.61
Ladd, D. "A"	35.00	5,650	346.21
Laird, B. F. "A"	156.90	28,010	1,144.25
Laird, R. H. & W. L	61.60	11,330	376.63
Laird, S. S. alc A	230.00	29,225	1,407.77
Laird, S. S. alc B	425.00	36,245	2,213.30
Lawrence, H. M	164.70	26,325	1,171.21
Lindsey, L. R	42.63	5,290	206.07
McDavid, E	10.00	270	4.17
McFarland, J. M	66.50	10,465	392.29
Mackey, W. C	202.50	11,410	623.99
Mattox, Maye	62.42	4,880	245.09
Miller, J. T. "B"	99.50	9,393	474.76
Minor, M. E	120.00	8,295	388.13
Moore, W. P. "A"	50.00	7,120	242.78
Moore, W. P. "B"	61.30	10,680	402.16
Mullikin, W. A	166.40	20,495	779.11
Neal, M. A	22.00	430	100.79
Naulls, E. W	74.94	3,615	201.63
O'Byrne, E. "B"	105.00	8,055	408.95
O'Byrne, E. "C"	10.00	350	21.69
O'Byrne, E. "D"	1 .00	435	24.37

DEFENDANTS' EXHIBIT No. 8—Continued

Lease	Acres	Potential	Allowable
Peterson, Ben	53.00	1,610	174.50
Peterson, J. N.	223.10	42.425	1,565.39
Peterson, W. D.	97.75	3,365	351.80
Piercy, H. A.	140.70	19,540	868.72
Pilgreen "C"	139.40	9,585	467.22
Pitner, J. J.	64.80	9,155	330.72
Phillips, A. O.	82.74	6,235	317.04
Phillips, Jessie	77.60	8,525	380.60
Plowman, S. A. "A"	228.50	37,846	1,455.18
Plowman, S. A. "B"	14.46	3,270	124.50
Price, W. L.	446.50	47,875	2,037.69
Reid, V. E.	85.00	6,030	257.61
Reeves, M. H.	28.00	3,400	116.22
Robertson, J. T.	30.00	3,295	129.29
Robertson, M.	30.00	4,330	155.89
Robertson, O.	52.66	1,160	99.28
[fol. 746]			
Scott, A.	20.00	2,510	103.90
Sexton, H. "A"	91.70	14,573	600.86
Sexton, H. "B"	258.60	24,925	984.18
Sexton, H. "C"	84.40	14,319	512.72
Sexton, J. E. "A"	68.80	9,770	368.50
Sexton, J. E. "B"	64.90	6,730	238.19
Sexton, J. T. "A"	137.48	11,775	508.59
Shaw, W.	72.21	6,155	256.77
Shelton, A. L.	43.00	3,720	186.60
Sheppard, J. H. "A"	58.00	9,150	361.40
Sheppard, J. H. "B"	7.65	2,585	80.94
Shoults, W. C.	7.50	130	20.44
Silvey, J. H. "A"	165.00	19,925	760.46
Silvey, J. H. "B"	35.00	7,163	220.13
Silvey, R. E. L. "A"	468.07	49,682	2,126.23
Silvey, R. E. L. "C"	58.02	7,355	329.52
Simmons, A.	32.50	3,975	157.4
Smith, I. D.	222.00	29,415	1,181.0
Smith, E. W.	50.00	4,555	207.88
Smith, J. M.	90.30	7,446	360.24
Smith, M. "A"	27.00	1,010	65.31
Smith, M. "B"	25.00	1,120	66.71
Sneed, J. E. "B"	104.70	14,770	651.42
Thomas, Dura	59.07	9,175	495.32
Thompson, C. J.	116.00	21,020	839.90
Thompson, J.	80.90	11,617	394.03
Thompson, M. C.	110.00	9,115	354.81
Trash, A.	12.00	2,515	112.31
Thrash, E. S.	42.04	5,680	243.73
Turner, J. W.	283.92	22,580	1,067.79
Turner, Neal	1.00	805	22.41
Turner, V. "A"	147.00	16,985	724.16

DEFENDANTS' EXHIBIT No. 8—Continued

Lease	Acres	Potential	Allowable
Turner, V. "B"	4.00	3,920	169.54
Walker, A. L.	128.50	17,475	656.36
Watkins, A. J.	81.30	6,890	362.59
Watkins, M.	10.00	360	22.32
Wells, Mary	69.50	6,230	300.05
Wheelis, J. E.	168.40	16,495	646.92
White, H. "A"	38.75	3,600	149.29
White, H. "B"	132.96	8,175	398.21
White, J. R.	43.00	2,515	121.84
Williams, Joe	65.50	5,020	212.19
Willingham, G. W.	100.60	7,445	404.50
Wilcoxon, J. Mrs.	17.00	3,255	121.43
Wilson, A.	58.61	6,805	313.98
[fol. 747]			
Wilson, C. W.	96.90	6,005	293.57
Wooley, J.	100.00	12,250	423.96
Wooley, J. H.	201.50	32,870	1,194.25
Wooley, T. M.	55.00	7,640	304.40
Wooster, F. F.	61.30	7,710	315.87
Wooster, M.	74.23	7,175	308.80
Young, C.	23.00	4,315	164.34
Total Humble	14,578.72	1,841,224	76,593.71
East Texas Field	132,011.83	15,794,503	690,109.36
Humble's Percentage to Entire Field	11.04%	11.66%	11.10%

Endorsed: Nos. 31, 36 & 46 Civil Defendants' Exhibit No. 8 Filed 14th day of February, 1940. Maxey Hart, Clerk. By Joe Steiner, Deputy.

[fol, 748] DEFENDANTS' EXHIBIT No. 9

Table Showing Number of Wells Producing Salt Water in the East Texas Field Grouped in Five Percent Intervals

Percent of total salt water produced	Number of wells
0% to 5%	789
5.1% to 10%	506
10.1% to 15%	320
15.1% to 20%	397
20.1% to 25%	212
25.1% to 30%	197
30.1% to 35%	212
35.1% to 40%	164
40.1% to 45%	109
45.1% to 50%	245
50.1% to 55%	70
55.1% to 60%	133
50.1% to 65%	105
[fol. 749]	
65.1% to 70%	117
70.1% to 75%	107
75.1% to 80%	203
80.1% to 85%	96
85.1% to 90%	177
90.1% to 95%	181
95.1% to 100%	82
Total wells producing salt water	4,422

Endorsed: Nos. 31, 36 & 46 Civil Defendants' Exhibit No. 9. Filed 14th day of February, 1940. Maxey Hart, Clerk. By J. E. Davis, Deputy.

[fol. 750] DEFENDANTS' EXHIBIT No. 10

Tabulation Showing Varying Density to Which East Texas Field Is Drilled

Acres	Barrels assigned by minimum	Wells	Per cent	Acres per well	Cumulative per cent	Average
109	7,200	360	1.40	.1 to .4	.....	.3
374	10,460	523	2.03	.5 to .99	3.43	.71
2013	26,720	1336	5.19	1. to 1.9	8.62	1.5
5637	44,740	2237	8.66	2. to 2.9	17.28	2.5
30160	146,620	7331	28.45	3. to 4.9	45.73	4.1
57448	196,980	9849	38.22	5. to 6.9	83.95	5.85
37159	82,560	4128	16.05	7 and above	100.00	9.
132900		25764				

Endorsed: Nos. 31, 36 and 46 Civil. Filed 14th day of Feb., 1940. Maxey Hart, Clerk. (Signed) By Joe Steiner, Deputy.

[fol. 751] DEFENDANTS' EXHIBIT No. 15

Railroad Commission of Texas Oil and Gas Division

Oil and Gas Docket No. 120

#6-795

In re CONSERVATION AND PREVENTION OF WASTE OF CRUDE OIL AND NATURAL GAS IN THE EAST TEXAS FIELD

Austin, Texas, July 13, 1939.

Pursuant To previous notice and hearing in the adoption and amendment of rules and regulations by the Railroad Commission of Texas governing the conservation of crude oil and natural gas and the prevention of waste thereof, and in the light of the evidence introduced at various hearings held by the Commission and particularly the hearing held in the City of Austin June 12, 1939, and in accordance with the findings of the Railroad Commission in its orders of August 26, 1935, September 3, 1937, and October 8, 1937, that the closer wells are drilled the greater will be the recovery from the area so drilled, and in view of certain allegations contained in the written petitions recently filed with the Commission by various owners of oil and gas leases in the East Texas Field;

It is Hereby Ordered by the Railroad Commission of Texas that Rule No. 1 of Sub-division II (Drilling) of Division 3, being special rules governing the East Texas Field, is hereby amended so that the same shall hereafter read as follows:

[fol. 752] Rule 1. Spacing Rule. No well for oil or gas shall hereafter be drilled in said East Texas Field nearer than 660 feet to any other completed or drilling wells on the same or adjacent tract or farm; and no well shall be drilled in said field nearer than 330 feet to any property line, lease line or subdivision line; provided that the Commission in order to prevent waste, or to prevent the confiscation of property will grant exceptions to permit drilling within shorter distances than above prescribed whenever the Commission shall determine that such exceptions are necessary either to prevent waste or to prevent the confiscation of property. When an exception to such rule is desired application therefor shall be filed with the Commission fully stating the facts, which application shall be accompanied by

a plat drawn to the scale of one inch equalling four hundred (400) feet, accurately showing to scale the property on which permit is sought to drill a well under an exception to this rule, and accurately showing to scale all other completed, drilling and permitted wells on said property; and accurately showing to scale all adjacent surrounding properties and wells. Such application shall be verified by some person acquainted with the facts, stating that the facts therein stated are within the knowledge of the affiant true, and that the accompanying plat is accurately drawn to scale and correctly reflects all pertinent and required data. Such exception shall be granted only after at least ten (10) day's notice to all adjacent lessees affected thereby has been given, and after public hearing at which all interested parties may appear and be heard, and after the Commission has determined that an exception to such rule is necessary either [fol. 753] to prevent waste or to protect the property belonging to applicant from confiscation.

Provided Further That the Railroad Commission of Texas, in order to prevent waste or to prevent the confiscation of property, may upon its own motion or order, issue or grant a permit or permits for the drilling of any well or wells for oil or gas nearer than 660 feet to any other completed or drilling well on the same or adjacent tract of land or farm and nearer than 330 feet to any property line, lease line or subdivision line as hereinbefore prescribed whenever the Commission shall determine that the drilling of any such well or wells is necessary to prevent waste or to prevent the confiscation of property. When in the opinion or judgment of the Commission waste or confiscation of property is reasonably eminent or is taking place on any leasehold, the Commission may, on its own initiative or motion, order a hearing for the purpose of determining whether such waste or confiscation of property is taking place. Such permit or permits shall be issued or granted only after at least ten (10) days' notice to the owners of said leasehold and to all adjacent lessees affected thereby has been given, and after public hearing at which all interested parties may appear and be heard and after the Commission has determined that the drilling of any well or wells for oil or gas is necessary either to prevent waste or to protect the owners of said leasehold from confiscation.

[fol. 754] No well drilled in violation of this rule without special permit obtained issued or granted in the manner pre-

scribed in said rule, and no well drilled under such a special permit or on the Commission's own order which does not conform in all respects to the terms of such permit, shall be permitted to produce either oil or gas; and any such well so drilled in violation of said rule or in violation of a permit granted as a special exception to said rule or on the Commission's own order shall be plugged.

The order entered by this Commission on August 30, 1933, commonly designated as the direct and equidistant offset order is hereby rescinded, annulled and shall be of no further force and effect. All other rules, regulations and orders of this Commission which conflict with the terms and provisions of Rule No. 1 as hereby amended and promulgated are hereby declared to have no further application to wells in said East Texas Field to the extent of such conflict.

In the adoption and promulgation of this order, it is here declared that the Commission intends to adopt each phrase, sentence, and paragraph separately and independently of each other such phrase, sentence, and paragraph, and if any portion of this order or any portion of the rule hereby adopted shall be declared invalid, such declaration and such invalidity shall not affect any other portion.

Railroad Commission of Texas, Lon A. Smith, Chairman; Jerry Sadler, Commissioner. (Seal.)

Attest: C. F. Petet, Secretary.

[fol. 755] STATE OF TEXAS,
County of Travis:

I, C. F. Petet, Secretary to the Railroad Commission of Texas, do hereby certify that the attached order of the Railroad Commission of Texas described as follows:

Order of Railroad Commission of Texas dated July 13th, 1939, in re Conservation and prevention of waste of crude oil and natural gas in the East Texas Field,

is a true and correct copy of the original order as shown by the records in that office, and in my custody as secretary and Custodian of the files of said Railroad Commission of Texas.

Witness my hand and the seal of the Railroad Commission of Texas, this the 2nd day of August, 1939, A. D.

(Signed) C. F. Petet, Secretary.

[fol. 756] DEFENDANTS' EXHIBIT NO. 16

Railroad Commission of Texas

Oil and Gas Division

Oil and Gas Dockets Nos. 108, 120, 123, 124, 125, 126, 128, 129, 132, and 146.

In re: CONSERVATION AND PREVENTION OF WASTE OF CRUDE PETROLEUM AND NATURAL GAS IN THE STATE OF TEXAS

Austin, Texas, August 26, 1935

Special Order Fixing Allowable Production of Crude Oil in the Various Fields and Districts in Texas

Whereas, after due notice hearings have been held at Austin, Texas, at various times, including hearing on August 19, 1935, with respect to the existence and imminence of waste of oil and gas in the State of Texas, and the prevention thereof; and,

Whereas, in view of the evidence, including among other matters the physical conditions in the various fields, the transportation and marketing facilities, the reasonable market demand, the reasonableness of the allocation as between fields of the allowable production under previous orders; and,

Whereas, the Railroad Commission of Texas finds from the evidence that the reasonable market demand for oil produced in this State from the various fields and districts therein equals the amount hereinafter shown as the allowable production thereof during the period beginning at 7 o'clock A. M., September 1, 1935, and ending at 7 o'clock, A. M., October 1, 1935; and,

Whereas, the Railroad Commission of Texas finds that waste exists or is imminent and that to prevent such waste of oil and gas, as the same is defined by the applicable statutes, it is necessary to restrict the production of oil in the [fol. 757] State of Texas as provided for herein:

Whereas, at the hearing of the Railroad Commission of Texas on August 19th, 20th, 26th, and 27th, 1935, the Railroad Commission of Texas heard at great length the proposal as outlined by the witness F. E. Heath, who testified on behalf of the Humble Oil & Refining Company, The Texas Company, the Shell Company, the Sun Oil Company,

the Tidewater Company, Magnolia Petroleum Company and the Amerada Company, whose formula would put the East Texas Field on a plan of acreage proration, which plan was acreage times potential with a ten acre spacing rule, which works out as follows:

Under certain conditions, the owner of a ten acre tract in the East Texas Field with one well on this tract would be allowed 29 barrels of allowable production of petroleum each day, and the owner of a tract of one acre with one well on it, under the same conditions, would be allowed to produce 2.9 barrels of oil per day. This plan was later extended by the proponents to the extent that it was recommended that the Commission make exceptions so that the man with a well on one acre would be allowed substantially eight barrels of oil per day or enough oil to bring $8.00 per day, or some such amount, in the discretion of the Commission, which would allow the small operator to make a profit out of his operation.

The Commission, after an exhaustive hearing on this matter, finds that the present method of proration in effect in the East Texas Field at this time, which is to allow the well to produce that amount below set out, which is three per cent of the average hourly potential producing capacity of each [fol. 758] well, as determined by the Commission, is the fairest method possible.

The Commission further finds that this method of proration prevents waste, conserves the oil and gas within the East Texas Field, and does not result in injury to any lease operator or owner in said field.

In the recent case of Brown v. Humble Oil & Refining Company, the Supreme Court announced certain rules for our guidance in enforcing the provisions of Rule 37. We recognize the authority of that Court to construe the laws under which we function, as well as its authority to review orders pursuant to statute or under the circumstances outlined in that opinion, and it is not only our duty but our desire and intention to comply with its decrees. However, in this instance, the importance of its decision to this boy, the public and the industry is so great that we must undertake to be certain, both of our understanding of the scope of the judgment and of its finality.

As an administrative body, our temporary difficulty arises out of certain expressions in the opinion, founded on fact issued, which are not consonent with the evidence presented

to this Commission over a period of years on the same essential facts as presented at this and prior hearings held by this Commission. If such expressions are limited to facts necessary to a decision of that case, they present no confusion, but, if they are intended to form a rule of property for our guidance in all cases, then it appears to us that the importance of the question merits clarification.

In the opinion referred to, the Court observes, "It is now, however, recognized that when an oil field has been [fol. 759] fairly tested and developed, experts can determine approximately the amount of oil and gas in place in a common pool, and can, also, equitably determine the amount of oil and gas recoverable by the owner of each tract of land under certain operating conditions."

Based upon this finding, the Court then defines our duties in the following language, in part:

"Also conditions may arise where it would be proper, right and just to merit tracts to be sub-divided, and such sub-divisions drilled after the adoption of the rule but in all such instances it is the duty of the Commission to adjust the allowable, based upon the potential production, so as to give the owner of such smaller tract only his just proportion of the oil and gas. By this method each person will be entitled to recover a quantity of oil and gas substantially equivalent in amount to the recoverable oil and gas under his land."

Our uncertainty arises out of the fact that, in the exercise of our duties at hearings held over a number of years, a substantially preponderant majority of the expert witnesses have testified under oath to facts which do not harmonize with but contradict the statement that "when an oil field has been fairly tested and developed, experts can determine approximately the amount of oil and gas in place in a common pool and can, also equitably determine the amount of oil and gas recoverable by the owner of each tract of land under certain operating conditions". In fact, the testimony we have heard at this and other hearings held in the past is to the effect that surface ownership has no true relation to [fol. 760] the oil and gas reserves which may underlie the particular surface, and that sufficient information is not available in the state of engineering science today to determine with that degree of exactitude indicated by the quotation from the opinion the amount of oil and gas in place in a common pool * * * to equitably determine the

amount of oil and gas recoverable by the owner of each tract under certain operating conditions.

We further find from the evidence the more wells that are drilled the greater will be the ultimate recovery of oil and gas from any given pool.

The hearing just closed raises grave doubts as to the wisdom or value of any Rule 37 in preventing waste or in aid of the recovery of oil, except in the instances of certain new fields and then only as a prevention of fire hazards and blowout dangers.

Now, Therefore, in order to prevent the waste of oil and gas in the State of Texas, which will take place by authorizing production over the said period in excess of the reasonable market demand:

It Is Hereby Ordered that beginning at 7 o'clock A. M., Sunday, September 1, 1935, and continuing to October 1, 1935, unless other periods are prescribed herein, the production of oil in the State of Texas, and the various fields therein, until further ordered, shall not exceed the amounts hereinafter shown as the allowable production thereof, and in order to adjust the current allowable production of crude oil in Texas, as nearly as may be, to the demand as shown, the allowable daily production of the various fields and districts in said State shall be limited to the amounts herein- [fol. 761] after specified and the following orders fixing such limitation on production in the various fields and districts are hereby adopted.

1. Rule 2 of Division 2 as contained in an order of this Commission dated October 17, 1933, pertaining to the Panhandle District of Texas is hereby readopted and amended as follows:

Rule 2. Not more than fifty-two thousand eight hundred (52,800) barrels of crude oil shall be produced from said district during any day of the effective period of this order. Moore County shall not produce in excess of fifteen hundred (1500) barrels per day. Moore County allowable is additional to Panhandle allowable.

2. Rule 23 (a) of Division 3, as contained in an order of this Commission dated October 17, 1933, pertaining to the East Texas Field is hereby readopted and amended as follows:

Rule 23 (a). It is ordered that during each twenty-four (24) hour period beginning at 7 A. M., Central Standard

Time, September 1, 1935, the owner or operator or manager of each well in the East Texas Field, shall be permitted, either collectively or individually, to produce daily from each well a maximum of Three (3%) per cent of its average hourly potential production capacity as determined by the Commission.

3. Rule 2 of Division 5, as contained in an order of this Commission dated October 17, 1933, pertaining to the North Texas District is hereby readopted and amended as follows: [fol. 762] Rule 2. Not more than fifty-eigth thousand five hundred (58,500) barrels crude oil shall be produced from said district during any day of the effective period of this order. Foard County shall not produce in excess of eight hundred thirty-seven (837) barrels per day. Foard County allowable is additional to North Texas allowable.

4. Rule 2 of Division 6, as contained in an order of this Commission dated October 17, 1933, pertaining to the West Central Texas District is hereby readopted and amended as follows:

Rule 2. Not more than forty-nine thousand one hundred ninety-five (49,195) barrels of crude oil shall be produced from said District during any day of the effective period of this order, which is distributed to the various counties as follows:

Brown	2006	McCullough	1
Callahan	1631	Palo Pinto	447
Coleman	1310	Reagan (Big Lake)	9,800
Comanche	84	Reagan (Grayson)	180
Crockett (Todd)	10	Shackelford	5873
Crockett (World)	835	Stephens	5080
Eastland	3191	Throckmorton	483
Erath	113	Taylor	130
Fisher	5,331	Upton (McCamey)	5920
Haskell	17	Young (S/2)	4079
Irion	56	Runnels	520
Jones	2,098		

5. Rule 4 of Division 7, as contained in an order of this Commission dated October 17, 1933, pertaining to the West Texas District is hereby readopted and amended as follows:

Rule 4. Not more than one hundred thirty thousand one hundred twenty (130,120) barrels of crude oil per day shall

be produced from said District during any day of the effective period of this order, which shall be distributed to the various fields therein as follows:

[fol. 763]

Brown & Altman	212	Netterville	9
Church & Fields	5830	Monroe	25
Cowden, North	3270	Means	605
Cowden, South	580	Parker	119
Crane-Dowden	372	Pecos Valley	225
Crane-Waddell	313	Richards	12
Depp Rock	239	Halley	100
Edwards	4	Northwest	23
Ector-Harper	125	Scarbrough	2325
Ector-Penn	5088	Sealey	66
Fuhrmans	900	Shipley	1580
Gulf-McElroy	3865	Taylor-Link	1165
Sayre	1650	Tobarg	1750
Hendricks	16,150	Ward, North	5650
Howard-Glasscock	20,000	Ward, South	9800
Iatan-E. Howard	4,000	Westbrook	919
Johnson	35	Walker	12
Keystone	350	White & Baker	2
Leck	500	Yates	39,124
Loving (Wheat)	1,986	Goldsmith	375
Masterson	250	Sand Hills	15
McClintic	500		

6. Rule 2 of Division 4, as contained in an order of this Commission dated October 17, 1933, pertaining to the East Central Texas District is hereby readopted and amended as follows:

Rule 2. Not more than forty seven thousand eight hundred thirty-six (47,856) barrels of crude oil per day shall be produced from said fields in said District during any day of the period of September 1, 1935, to October 1, 1935, said amounts shall be allocated to the various fields in the following amounts:

Boggy Creek	572	Long Lake	200
Camp Hill	651	Mexia	2145
Cayuga	3720	Post Oak	2
Curry	148	Pottsboro	6
Corsicana	415	Rusk	450

Richland	35	Van Shallow	215
Powell	2244	Trinity	1,174
South Bosque	12	Wortham	102
Van	35,733	Wortham Shallow	12

7. Rule 2 of Division 8, as contained in an order of this Commission dated October 17, 1933, pertaining to the Southwest Texas District is hereby readopted and amended as follows:

Rule 2. Not more than ninety-five thousand nine hundred nine (95,909) barrels of crude oil shall be produced in said District during any day of the effective period of this order, and the same shall be distributed to all fields in said district as follows:

[fol. 764] Division 1:

Alta Vista	5	Kimbro	22
Bateman	247	Larremore	40
Bob Rose	73	Loma Alto	132
Buchanan	41	Lowe	1
Callahan	48	Luling-Branyon	5637
Carroll	84	Lytton-Springs	396
Cedar Creek	42	Manford	36
Cedar Creek (N)	200	Matthews	59
Chapman-Abbott	396	Meaders	6
Chicon Lake	13	Minerva Rockdale	203
Clark	100	Noach	731
Cooksey	16	Pearsall	(Shut in)
Darst Creek	8932	Schimmel-Batts	1
Dale	165	Somerset	733
Dunlap	15	Southton	72
Eckert	271	Taylor Ina	12
Espada Mission	1	Thrall	53
Gas Ridge	7	Salt Flat	4112
Hilbig	722	Von Ormy	39
Jones	1	Yoast	75
Jacobs	595		

Division 2:

Caesar	950	Greta	11,830
Coletta Creek	660	Keeran	320
Dinero	240	McFadden	130
Dirks	1900	McNeil	500

Mineral	10	Refugio (Deep Sand)	195
Mt. Lucas	210	Refugio (New)	1305
Normanna	15	Refugio (Old)	2800
O'Connor-McFadden	350	Hords Creek	2
Placedo	470	Tuleta	2527
Pettus	1661	Vanderbilt	100
Pettus (New)	870	Worthington	200
Port Lavaca	600	Mekeska	150
Quintanna-O'Connor	1600	Maurtiz	150
Ray	950		

Division 4:

Albercas	111	Loma Novia	2520
Alworth	3	Lopez	450
Angelita	3	Los Olmos	200
Aviators	409	Mercedes	150
Barbacosa	38	Mirando City	389
Bruni	2,975	Mirando Valley	25
Carolina-Tex	23	Moca	614
Charco Redondo	9	O'Hern	920
Cole East	37	Piedras Pintas	45
Cole West	753	Plymouth	1800
Cuellar	113	Premont Prospect	20
Driscoll	249	Randado	334
Eagle Hill	471	Rio Grande City	384
Escobas	1396	Roma	4
Gov't Wells (N)	11,233	Sinton	594
Gov't Wells (S)	5,789	Seven Sisters	320
Guerra	372	S. R. C.	40
Henne-Winch-Farris	26	White Point	38
Jennings	555	Sam Fordyce	3126
Kingsville	61	Sarnosa	940
Kohler	132	Saxet (Old)	1262
Laurel	95	Saxet (New)	1849

8. Rule 2 of Section A; Division 8, as contained in an order of this Commission dated October 17, 1933, pertaining to the Gulf Coast District is hereby readopted and amended as follows:

Rule 2. Not more than one hundred forty-seven thousand three hundred forty-eight (147,348) barrels of crude oil per

[fol. 765] day shall be produced from said fields of said district during any day of the effective period of this order which shall be distributed to said fields as follows:

Allen Dome	5	Louise	1241
Anahuac	900	Livingston	2666
Ariola	1150	Manvel (Miocene)	4000
Bay City	35	Manvel (Oligocene)	3500
Big Creek	931	Markham	1349
Blue Ridge	1015	Mykawa	775
Boling	605	Mykawa (New)	2100
Brenham	6	Nash Dome	35
Brookshire	16	North Dayton	162
Buckeye	220	Old Ocean	200
Batson	690	Orchard	600
Batson (New)	621	Orange	741
Barbers Hill	17,205	Pickett Ridge	150
Clay Creek	1,049	Port Neches	1488
Cleveland	775	Pierce Junction	2790
Conroe	39,525	Pierce Junction (Vicksburg)	583
Damon Mound	521	Raccoon Bend	2883
Dickinson	964	Raccoon Bend (Cockfield)	1581
Esperson Dome	1200	Rockland	3
Fannett	964	Saratoga	850
Goose Creek	2857	Schwab	56
Gillock	(Shut in)	Sugarland	5580
High Island	6170	Sour Lake	1755
Hankamer	1858	South Liberty	586
Hankamer (New)	350	Spindletop	2597
Hardin	150	Thompson	10,737
Hastings	1800	Tomball	4,650
Hull (Old)	3583	West Columbia	2,321
Hull (New)	2961		
Humble	3255		
Lost Lake	230		

It Is Further Ordered that allowable oil in the foregoing order is oil measured on 100 per cent tank tables according to the Pipe Line Rule Number Nine (9) and corrected to sixty (60) degrees Fahrenheit.

It Is Further Ordered that this Cause be held open on the docket for such further orders as may be necessary and supported by evidence of record in above Cause.

Railroad Commission of Texas; Ernest O. Thompson, Chairman; C. V. Terrell, Commissioner; Lon A. Smith, Commissioner. (Seal.)

Attest: C. F. Petet, Secretary.

/jhi.

[fol. 766] I, C. F. Petet, Secretary of the Railroad Commission of Texas, do hereby certify that the attached instrument, being a mimeographed copy of the Commission's Order entitled "Special Order Fixing Allowable Production of crude Oil in the Various Fields and Districts in Texas" dated August 26, 1935, is a true and correct copy of the original now on file in these offices and in my custody as Secretary of said Commission.

Witness my hand and the seal of the Railroad Commission of Texas this the 11th day of October, 1939.

(Signed) C. F. Petet, Secretary of the Railroad Commission of Texas.

Endorsed: Nos. 31, 36 & 46 Civil. Defendants' Exhibit 16. Filed 16th day of February, 1940. Maxey Hart, Clerk. By J. E. Davis, Deputy.

Endorsed: In the District Court of the United States in and for the Western District of Texas, Austin Division. Humble Oil & Refining Co. vs. Railroad Commission of Texas et al. No. 31-Civil. Transcript of Evidence. Filed: 10th day of April, 1940. Maxey Hart, Clerk, by Joe Steiner, Deputy.

[fol. 767] IN UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION

No. 31 Civil

HUMBLE OIL & REFINING CO.

v.

RAILROAD COMMISSION OF TEXAS, ET AL.

Attorneys for Plaintiff:

Rex G. Baker, E. E. Townes, R. E. Seagler, Felix A. Raymer, Carl Illig, Jr., R. E. Hardwicke, Powell, Rauhut & Gideon.

Attorneys for Defendants:

Gerald C. Mann, Attorney General of Texas, James P. Hart, D. D. Mahon, E. R. Simmons, Tom D. Rowell, Jr., Edgar Cale, and Lee Shoptaw, Assistant Attorney Generals.

No. 36 Civil

F. W. FISCHER

v.

LON A. SMITH, ET AL.

Attorneys for Plaintiff:

F. W. Fischer, W. T. Saye.

Attorneys for Defendants:

Gerald C. Mann, Attorney General of Texas, James P. Hart, D. D. Mahon, E. R. Simmons, Tom D. Rowell, Jr., Edgar Cale, and Lee Shoptaw, Assistant Attorney Generals.

No. 46 Civil

ROWAN & NICHOLS OIL CO.

v.

RAILROAD COMMISSION OF TEXAS, ET AL.

Attorneys for Plaintiff:

Dan Moody, Rice M. Tilley.

Attorneys for Defendants:

Gerald C. Mann, Attorney General of Texas, James P. Hart, D. D. Mahon, E. R. Simmons, Tom D. Rowell, Jr., Edgar Cale, and Lee Shoptaw, Assistant Attorney Generals.

Opinion of the Court After Trial on the Merits—February 21, 1940

TENTATIVE CONCLUSIONS OF LAW

[fol. 768] Judge Sibley: Are counsel present in the oil cases? They don't have to be.

Mr. Baker: Yes, sir, I am here for the Humble.

Mr. Cale: The Railroad Commission is represented. I don't believe Mr. Fischer has a representative here. I don't know.

Judge Sibley: He wouldn't have to be, of course. We are about, gentlemen, to announce our conclusions in a general way in these cases. The paper I am about to read is not final. It is in the nature of conclusions of law, but we reserve the right to modify or change them to meet more exactly our views, to express more exactly what we think the law is, if it becomes necessary, but for the present purposes, I read these conclusions, disposing of the cases.

First, the court has jurisdiction in each case.

Second, in the case of F. W. Fischer, an injunction, either temporary or permanent, ought not to be granted, because no irreparable injury is shown to him by the operation of the order. It does not operate unreasonably as to him.

We find, as will appear, that the situation is otherwise as to the other litigants. We think that the present injury to each of them is clear, practically admitted, and the only reply to it is that in the future the injury under this order may be returned to them. We regard that contingency as so uncertain as to make it our duty to look principally to the present operation, and to say that they have established such an injury in its nature irreparable, and without any other remedy at law as to make it our duty to examine the order.

That part of the order which fixes the top allowable made to prevent waste, the Commission had power to make, and it is not arbitrary or unreasonable. The statute which declares that pumping wells of the depth that all wells have in the East Texas oil field and which can produce no more [fol. 769] than twenty barrels per day in thirty consecutive days are "marginal wells", and not to be restricted by the Commission, is not patently invalid. These wells are almost wholly on the edges of the field and are approaching exhaustion. The Legislature could make of them a sepa-

rate class, and in view of the expense of operating them by pumping and of their probable short life, the fixed allowable granted them is probably not arbitrarily fixed. The amount of the present top allowable to them is less than one per cent, and the effect of it on the fairway wells which are here complaining is too uncertain and insignificant to require a decision on the constitutionality of the statutory classification.

The portion of the order which prorates the remainder of the top allowable among the non-marginal leases and wells so operates that about three-fourths of it is distributed on a flat basis per well so as to give each well an initial twenty barrels per day, but with three days of shut down each week, it makes an equivalent of about 11.7 barrels per day. The remaining one-fourth is prorated by a formula which takes account of the productive capacity or potential of each well, and the acreage, sand thickness, and bottom hole pressure of each lease, all as factors in fixing the allowable for the wells on the lease. This operates to restrict more drastically the production from the best wells and leases in the fairway, where all those of Rowan & Nichols Company are and most of those of Humble Oil Company, than that from less productive wells to the east and west, and that from more densely drilled leases in the fairway. Is this result so unreasonable as to make the order contrary to the statute or the Fourteenth Amendment?

The question under the two seems to be approximately the same. If the proration is unreasonable, the statute doesn't give the Commission authority to make it. If it is [fol. 770] so unreasonable as to be arbitrary, the Constitution does not permit *to* to be done either by the Legislature or the Commission.

The Commission as to all wells at first made a straight per well proration. The Commission's orders of this sort were held unreasonable. A later order which combined well potential with a flat per well allowance so that about half of the total was distributed according to potential was upheld as reasonable. It is not now urged that no basic flat per well allowable should be made, but only that three-fourths of the whole should not reasonably be so apportioned. The reason for distributing three-fourths of the allowable on a flat basis per well, or for distributing any of it on that basis, is not precisely disclosed. As in the case of marginal wells, it seems to be thought necessary in order

to keep the poorer wells, especially those having to be pumped, going at all. If they were forced out, the oil they would produce might in fact never be produced, causing waste; or shut down might be a deprivation of their owners' property contrary to the Constitution. The evidence here, however, is that even with a pumping well production can be profitably continued on five to ten barrels per day. We can think of no reason why a higher allowable per day should be fixed for non-marginal wells when to do so makes three-fourths of the distributable oil go neither according to the productive capacity of the wells nor according to the oil belonging to the several leases. That the Legislature fixed a figure of twenty barrels for marginal wells is without great significance, for they are perishing wells. Others which are near the border line will soon enough enter that class, and need not prematurely be treated as such. The drilling density of wells is so diverse on different leases otherwise comparable that to distribute three-fourths of a top allowable on a flat basis per well without reference to the oil reserves of the lease or the productive capacity of [fol. 771] those wells, which constitute the value of the property, is unreasonable and therefore in violation of the Constitution and the statute. It is not for us to suggest a proportion or a formula. We think the present proportion unsustainable.

We do not say that the time element, the probable life of the wells, may not be considered in an apportionment, though there is necessarily much uncertainty involved. We do not say that either presently or ultimately each lease must be allowed to produce in exact proportion either to its present or original oil in place. All of these may be given a reasonable consideration, sacrificing property interests as little as may be in the effort to achieve the public aim of conservation. Some inequalities attend all legal regulation, and must be borne; but the regulation itself must be on a fair principle and founded on good reason. Previous decisions have established a flat per well apportionment to be unreasonable, and also one which was substantially that, though some effect was given to well potential. We now hold that with the wide differences in well density and in well capacity that exists in the East Texas field, an apportionment of three-fourths on a flat per well basis is not justified by a good reason,—is unreasonable.

As the conclusion from this holding, we will deny the temporary injunction to the Rowan & Nichols Company for the reason that one was denied in respect to the Humble Company, and we think it best to let matters go along on an even keel with no differences in the oil field. Permanent injunction will be granted both to the Rowan & Nichols Company and to the Humble Company, but we do not wish to enter the injunctive decrees and upset the oil field until an opportunity has been given to decide the future of this case. For that reason, for the period necessary to make a [fol. 772] determination, about which we will hear you gentlemen, we desire that a decision be reached as to whether or not an appeal is to be taken, or whether the decision will be submitted to on the part of the Railroad Commission.

If it is to be submitted to, they probably would desire time to make a new order, in order to avoid upsetting the operations in the field. If it is to be appealed, we would, of course, have to enter the final decrees that they might be appealed from, but the effect of it could be controlled by orders or supersedeas of the proper sort. So that is the practical situation that we wish to handle. If there is an appeal, of course, findings of fact in which we would want the assistance of counsel would have to be prepared, and perhaps more exact or more elaborate findings of law, conclusions of law, but this states our decision of the case.

If the Commission or its representative could indicate to us what time they would like to consider the future course of matters, we would be glad, of course, to understand what that time is, and fix it. We will have to separate, but we would be glad to take care of it by mail.

Mr. Cale: May it please the court, I would like some hour or so to confer with the Railroad Commissioners on their desire in the matter. At this point I can't definitely tell the court what position they will take. I presume they will pursue the course of an appeal, but in the event that is not their desire in the matter, I would like to have some time to discuss it with them and report back to the court.

Judge Sibley: That is an entirely reasonable time.

Mr. Baker: I want to be sure, if the court please, that I understand. I assume that the court had in mind that the Commission would be given a reasonable time to make an order that would remedy the situation, or at least do away

[fol. 773] with this order which the court has held to be unreasonable.

Judge Sibley: If they wish to, we will consider that.

Mr. Baker: Yes, sir.

Judge Sibley: But they say for the present they want to decide whether they are going to appeal.

Mr. Cale: That is correct. I would like to have an opportunity to confer with the Commission and see what their wishes are and report back some time this afternoon or after lunch at the court's pleasure.

Mr. Baker: If the Commission should——

Judge Sibley: We don't want to rush you to an hour.

Judge Allred: We don't want to limit the conference with the Commission, as to whether you will appeal or not. You can confer with them about whether they will call a hearing and perhaps pass another order. We will give you all of the time you need.

Judge Sibley: You can have all of the time you need to keep your business straight. That is the purpose of our question.

Mr. Cale: Yes, sir. We would like to have as much time in that regard as the court will give us. We would like to cooperate with the court as much as we can.

Judge Sibley: I think a week or ten days, if you want to consider the situation and arrive at a fixed conclusion that will be reasonable and right.

Mr. Cale: I understand the order will not be entered?

Judge Sibley: There will be no order entered at all within that time.

Mr. Cale: All right, thank you, sir.

Judge Allred: And, Judge, pardon me. I think the Commission would be entitled to this indication. If the Commission desires to hold a hearing—give notice and hold a hearing, with the idea in mind to prepare another order, we would be willing to extend that time.

[fol. 774] Judge Sibley: I think so.

Judge Allred: They have to give ten days notice under the statute, if they want to do that.

Mr. Cale: Yes, sir, that is correct.

Judge Sibley: I really had in mind to give thirty days for a purpose of that sort.

Mr. Cale: We would appreciate having that time, your Honor. I didn't know what the court's disposition would

be in regard to that matter. If you could give us thirty days——

Judge Allred: I think Judge Sibley meant we would give you ten days for the Commission to decide what they wanted to do, and if they wanted further time to give notice and have a hearing, we would be willing to give you thirty days, so as to give time to give that notice, as required. That is my understanding. That was your understanding, wasn't it, Judge?

Judge Sibley: Yes.

Mr. Cale: Thank you, sir.

Judge Sibley: We will not hold the Pullman Company lawyers in attendance. We will have to decide that case a little more at our leisure. We can't decide it instantly, and we will file a decision when we reach it.

Mr. Moody: May I ask a question? All of the questions or exceptions and matters of that kind, I suppose, will be taken care of when the order is finally entered?

Judge Sibley: You don't need any exceptions now. They are obsolete.

Mr. Moody: Well, I wasn't sure about the new practice.

Judge Sibley: Well, we will take a recess. We will take a recess until two o'clock.

[fol. 775] Reporter's certificate to foregoing paper omitted in printing.

[fol. 776] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION

Civil Action No. 31

HUMBLE OIL & REFINING COMPANY, Plaintiff

vs.

RAILROAD COMMISSION OF TEXAS, ET AL., Defendants

FINAL JUDGMENT—Filed March 20, 1940

This action having been heard twice heretofore before statutory three-judge courts duly assembled on motions for preliminary injunctions, came on to be tried on its merits on February 13 to 16, 1940, before a statutory court of three judges, consisting of Sibley, Circuit Judge, and McMillan and Allred, District Judges, and came the plain-

tiff, Humble Oil & Refining Company, by its attorneys of record and announced ready for trial, and came the defendants, the Railroad Commission of Texas, Lon A. Smith, Ernest O. Thompson and G. A. Sadler, members of said Commission, and Gerald C. Mann, Attorney General of Texas, in their official and individual capacities, by their attorneys of record and announced ready for trial, and it appearing that proper notice of this action has been given to the Governor and Attorney General of Texas as required by law, and that the Court has jurisdiction of the parties and subject-matter involved in this action, and the Court, having heard the pleadings of the parties, the evidence and argument of counsel, and being fully advised, is of the opinion that the law and the facts are with the plaintiff, and that the orders and schedules of the Railroad Commission of Texas for the East Texas field complained of in this action are unreasonable and void as to plaintiff, and deprive plaintiff of its property contrary to the [fol. 777] statutes of the State of Texas and in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, and inflict upon plaintiff daily and currently irreparable injury for which plaintiff has no adequate remedy at law; and the Court being of the further opinion that plaintiff will hereafter daily and currently suffer irreparable injury for which it has no adequate remedy at law, all contrary to the statutes of Texas and the Fourteenth Amendment as aforesaid, if orders which are the same or substantially the same as the orders complained of are enforced against plaintiff's properties and wells in the East Texas field; and the Court having afforded to the defendant, Railroad Commission of Texas, a period of ten days in which to decide whether it would write a new and valid order and schedules for said field or would appeal this action, and having been advised by said Commission that it would appeal and that it will not write an order and schedules for said field differing in any material respects from the orders and schedules complained of; and the Court being of the opinion that a permanent injunction should issue against the defendants as set out below;

It is, therefore, Ordered, Adjudged and Decreed that the Railroad Commission of Texas, Lon A. Smith, Ernest O. Thompson and G. A. Sadler, members of said Commis-

sion, and Gerald C. Mann, Attorney General of Texas, in their official and individual capacities, their successors, representatives, agents, servants, attorneys and employees be, and they are each and all hereby permanently enjoined from enforcing or attempting to enforce against plaintiff the proration orders promulgated by the Railroad Commission of Texas on September 11 and September 29, 1939, and January 24, 1940, and the schedules issued in connection therewith, for the East Texas field, as well as any and all other proration orders, rules, regulations and schedules which have been or may be promulgated by the Railroad Commission of Texas for the East Texas field which are the same or substantially the same, or similar to, or have substantially the same effect as, said orders and schedules, [fol. 778] or which attempt to prorate the production among properties in the East Texas field on a basis which is the same or substantially the same as the basis applied in said orders and schedules.

It is further Ordered, Adjudged and Decreed that the defendants and each of them, their successors, representatives, agents, servants, attorneys and employees, are hereby permanently enjoined from denying to plaintiff tenders to move, or from interfering in any way with the transportation and marketing of, the oil produced or to be produced in accordance with this judgment, and from suing for or from attempting otherwise to claim or collect penalties or to enforce forfeitures or in any other manner to penalize the oil or plaintiff, on account of the oil produced or to be produced in accordance with this judgment.

It is further Ordered, Adjudged and Decreed that the defendants and each of them, their successors, representatives, agents, servants, attorneys and employees, are hereby permanently enjoined from suing for or from attempting otherwise to claim or collect penalties from plaintiff or to seek to enforce forfeitures against plaintiff or from attempting in any other manner to penalize plaintiff on account of oil which plaintiff may have produced under the provisions of the preliminary injunction heretofore granted on August 11, 1939 in this action.

It is further Ordered, Adjudged and Decreed that all costs in this action are taxed against the defendants, except the costs incurred in connection with plaintiff's second motion for a preliminary injunction, which latter costs are taxed against plaintiff.

The defendants having announced that they would appeal from the judgment in this action, and the court being of the opinion that the injunction should be stayed for a reasonable length of time within which the appeal can be [fol. 779] perfected and prosecuted, it is further Ordered, Adjudged and Decreed that the enforcement of the injunction herein granted is stayed for a period of sixty (60) days from the date hereof.

The Clerk is directed to enter this judgment.

To all of the foregoing judgment, except that portion staying the injunction as above provided, the defendants in open court duly excepted.

Done at Houston, Texas, this the 19th day of March, A. D. 1940.

(s) Saml H. Sibley, Circuit Judge; James V. Allred, District Judge; Robert J. McMillan, District Judge.

Approved as to form; Rex G. Baker.

Entered: Civ. O. B., Vol. 1, page 84.

[File endorsement omitted.]

[fol. 780] In United States District Court

[Title omitted]

Findings of Fact and Conclusions of Law—Filed March 20, 1940

As required by Rule 52(a) of the Federal Rules of Civil Procedure, the court of three judges (consisting of Sibley, Circuit Judge, and McMillan and Allred, District Judges) makes the following as its findings of fact and conclusions of law in the above numbered and entitled action, and the court directs that the Clerk of this court file such findings and conclusions as part of the record in this action.

A

Findings of Fact

I

Parties and Jurisdiction

1. Plaintiff is a private corporation, duly organized and existing under the laws of the State of Texas, with its principal place of business in Harris County, Texas.

2. The Railroad Commission of Texas is domiciled in Travis County, Texas, and is the duly created and existing agency of the State of Texas, charged with the administration of the laws of the State of Texas governing the conservation of oil and gas and the production thereof. Defendants, Lon A. Smith, Ernest O. Thompson and G. A. Sadler, are the duly elected, qualified and acting members of and compose the Railroad Commission of Texas. Their [fol. 781] official residences are in Travis County, Texas. Defendant Gerald C. Mann is the duly elected, qualified and acting Attorney General of Texas, with his official residence in Travis County, Texas. Proper notice of this action has been given to the Governor and the Attorney General of Texas, and proper service of process has been had upon all of the defendants. Furthermore, the defendants have filed their answer to the original and supplemental complaints.

3. This is a civil action. The amount in controversy exceeds $3000.00, exclusive of interest and costs. In this action, plaintiff has attacked certain orders of the Railroad Commission of Texas fixing top allowables and prorating the allowable production among properties in the East Texas field on the ground that such orders as construed, applied and enforced against the plaintiff are without authority at law and are in contravention of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

4. The plaintiff asked for preliminary injunctions in its original and supplemental complaints, and hearings were had and judgments entered on motions for preliminary injunctions before three-judge statutory courts, and the action was subsequently tried on its merits before a three-judge statutory court. Such statutory courts were duly constituted and assembled under Section 266 of the Judicial Code, as amended.

II

General Geologic Description of the East Texas Reservoir

5. The East Texas field is one huge reservoir embracing originally some 133,000 acres of land and at present including some 131,330 acres of land situated in Rusk, Gregg, Smith, Cherokee and Upshur Counties, Texas; the field is approximately 40 miles long north and south, and averages

about 4 miles wide east and west. The reservoir is in the Woodbine sand at an average depth of some 3,650 feet below the surface. In it the oil is confined by an impervious [fol. 782] formation (Austin chalk) above, and an impervious formation (Georgetown lime) and water below. A cross section of the field extending from west to east has the shape of a vast obtuse-angled triangle, with one of the short sides (westward) of the triangle resting on the water table as a base, with the other short side of the triangle (being a portion of the impervious bed of Georgetown lime) extending eastward and upward, and with the longest or top side extending from the point of contact between the oil, the water and the impervious roof on the west side of the structure, along such roof upward and eastward to the eastern extremity of the field. On the extreme west edge the oil-saturated portion of the sand is very thin, being less than a foot or so in thickness; going eastward, it gradually increases in thickness to the middle of the oil-saturated portion of the reservoir, or the so-called "fairway", where the oil sand attains a maximum thickness of about 90 to 100 feet; then the oil-saturated sand gradually decreases in thickness until it is pinched out and vanishes on the east edge of the field. The Woodbine sand extends in a westerly and upward direction from the field to an outcropping some 100 to 150 miles west and northwest of the field. Underlying approximately the west half of the oil-bearing sand and extending westward and upward to the outcropping is a vast amount of salt water occupying practically all of the Woodbine sand except that occupied by oil and gas. This salt water exerts pressure against the oil and gas in the reservoir. The pressure originally was some 1,650 pounds per square inch, but as the field has been produced the pressures have been reduced, and a pressure gradient has been built up across the field from west to east ranging from an average of nearly 1200 pounds per square inch on the west to an average of about 900 pounds per square inch on the east. The pressure of the water is the principal source of reservoir energy. As wells are drilled into the [fol. 783] producing sand, the reservoir pressures and the expansion of the gas in solution in the flowing wells, force the oil to the surface through the wells, thus affording the energy by which the field is produced. With respect to pumping wells, artificial means must be used to lift the oil

to the surface. The differential in pressures from west to east tends to drive the oil, as the field is produced, from west to east.

6. Gas is dissolved in the oil and will not come out of solution until pressures are reduced to approximately 750 pounds per square inch on the average. The presence of the dissolved gas makes the oil less viscuous, and materially increases its capacity to move through the pore spaces in the sand. If pressures are so reduced that gas comes out of solution, it will form bubbles in the producing sands and the oil will become more viscuous, thus materially impairing the ability of the oil to flow through the sands. Gas has already come out of solution in a small area in the southeastern portion of the field.

7. Furthermore, experience has shown that the field cannot for any extended period produce at a rate materially in excess of 400,000 barrels of oil per day without causing waste, considering that an average of about 200,000 barrels of water daily are currently being produced from the field with about 400,000 barrels of oil. If the top allowable for the field is placed too high, the reservoir pressure will drop rapidly and create conditions conducive to waste; and, considering the varying densities to which properties in the field have been drilled, there will be non-ratable withdrawals from the field, if much of the allowable be prorated on the per-well or per-well potential basis, or any basis giving too much value to wells or potentials, thus resulting in an uneven or irregular rise of the water table. This will cause large quantities of oil to be trapped off or enveloped by what is known as coning or channeling of the water, and will greatly reduce the ultimate recovery from the field, [fol. 784] thus causing physical waste.

8. The woodbine sand, in which the oil and gas are found in the field, is a very porous and highly permeable sand; there is intercommunication between all parts of the reservoir, thus permitting rather free movement of oil and gas from one portion of the reservoir to another. The fluids flow from areas of higher to areas of lower pressure, thus resulting not only in local migration, but also in a general movement or encroachment upward and eastward of water from the west, being a normal movement in the light of the pressure gradient across the field, high on west, lower in the

east. A well drilled into the reservoir and operated under proper conditions of control of reservoir pressure will effectively drain an area of at least ten acres.

9. The number of acre-feet of net effective oil sand in the field, or in a lease in any portion of the field, can be determined actually and relatively with reasonable accuracy by taking into consideration such factors as the number of acres of land in a lease and the average thickness of the net oil sand under the lease. It is likewise possible to determine with reasonable accuracy, actually and relatively, the quantity of oil per acre-foot of net effective-oil sand, and the quantity of recoverable oil in the field and in the various leases in the field assuming the conditions under which the field is to be operated.

III

Extent and Location of Plaintiff's Properties

10. Plaintiff owns leases covering approximately 14,656 surface acres of land within the producing limits of the field. Such leases comprise approximately 11.4% of the producing acreage within the field. Some of its leases lie in the western portion and some in the eastern portion; [fol. 785] but most of its leases are situated along a line running in a northerly and southerly direction near the middle of the field; that is, for the most part, its leases are located in the so-called "fairway", or that portion of the field where the producing sands have the greatest thickness and largest quantity of recoverable oil in place.

IV

The Oil Reserves in the Field and Under Plaintiff's Leases

11. Plaintiff's leases originally contained approximately 14.3% of the acre-feet of net oil sand in the field. The average thickness of the net oil sand under plaintiff's leases was 48.29 feet, while the average thickness of the net oil sand under the field as a whole was 37.78 feet.

12. Competent petroleum engineers and geologists will agree fairly well concerning the amount of oil per acre-foot of net oil sand in place in the East Texas field. The percentage of the oil which can be recovered per acre-foot depends upon the manner in which the individual wells and

the field as a whole are operated. If a proper allowable for the field and ratable production are maintained, a higher rate of recovery per acre-foot may reasonably be expected than if the allowable for the field is excessive, or if excessive localized withdrawals are permitted. The opinions of competent engineers and geologists may vary as to what the actual rates of recovery per acre-foot in the field will be in the future, due in part to their differences in assumptions as to the conditions under which the field may hereafter be operated. Such possible variances in recovery figures would not materially change the percentage of the total volume of recoverable oil in the field which lies under plaintiff's leases. Whether the rate of recovery per acre-foot in the field be high, medium, or low, plaintiff's percentage of the oil actually recovered (by itself or others) should not vary materially, due to the relation which exists between the number of acre-feet of oil sand under its leases com-
[fol. 786] pared with the number of acre-feet of oil sand in the field as a whole.

13. Up to June 1, 1939, the field had produced approximately 1,365,000,000 barrels of oil. Of this amount, plaintiff's leases produced approximately 131,000,000 barrels, or only about 9.6% of that portion of the original reserves which had been depleted up to that time. Plaintiff has been permitted in the past to recover only 11/15 as much oil per acre-foot of its oil sand depleted as the field as a whole has been permitted to produce per acre-foot of sand depleted.

14. At the present time the amount of net oil sand under plaintiff's leases is at least 14.3% of the total net oil sand now in the field; and it now has under its leases at least 14.3% of the total remaining recoverable reserve of oil in the field.

V

Comparative Drilling Densities in the East Texas Field

15. The East Texas field has been drilled to an average density of one well to approximately 5.17 acres. Plaintiff's properties have been drilled to an average density of one well to about 5.8 acres. Properties in the field other than plaintiff's properties have been drilled to a density of one well to approximately 5.1 acres. While the Commission's

rule which provides for well spacing, known as Rule 37, has been changed from time to time, more than 65% of the wells completed in the field have been drilled under permits granted by the Commission in exception to the rule. Since early in 1933, a 10-acre spacing rule has been in force. There is no uniformity of spacing in the field. Many areas in the field have been very densely drilled; for example, on 109 acres, some 360 wells have been drilled to a density of 0.1 and 0.4 of an acre, or an average density of .3 of an acre per well. On 374 acres in the field, some 523 wells have been drilled to a density between .5 to .99 of an acre, or to an average density of .71 of an acre per well. [fol. 787] On 2013 acres some 1336 wells have been drilled to a density of between 1 and 1.9 of an acre, or an average density of 1.5 acres per well. On 5637 acres some 2237 wells have been drilled to a density between 2 and 2.9 of an acre, or an average density of 2.5 acres per well. On 30,160 acres some 7331 wells have been drilled to a density between 3 and 4.9 of an acre, or to an average density of 4.1 acres per well. On 57,485 acres some 9879 wells have been drilled to a density between 5 and 6.9 of an acre, or to an average density of 5.85 acres per well. On 37,159 acres some 4128 wells have been drilled to a density of 7 acres or more per well, or an average density of 9 acres per well.

VI

The Allowable Schedules and the Basis of Allocation Under Order of June 19, 1939

16. The defendant Railroad Commission's statewide order of June 19, 1939, which became effective at 7:00 A. M., July 1, 1939, provided for an allocation of production on the basis of 2.32% of the hourly potential capacity of the several wells in the field as determined by the Commission. Such hourly potentials were determined by taking potential tests on some seventy key wells. Using these wells as control points, contour lines of equal potential were drawn. Wells other than key wells, falling between the contour lines, were then assigned potentials based on their relative positions with respect to the contour lines, whatever their actual potentials in reality may have been. Such a method of calculating or determining potentials necessarily involves the assumption, or finding, that relatively uniform

conditions exist over wide areas adjacent to each key well. In connection with the proration order of June 19, 1939, the Commission issued its allowable schedule under which it fixed the daily allowable production for the various wells in the field, and issued a shutdown order, shutting down the [fol. 788] entire field on certain specified days. These orders became effective July 1, 1939, and under their terms were to continue in effect until 7:00 A. M., October 1, 1939. From an examination of the schedules, it appears that the above proration order as construed, applied and administered by the Commission, allocated production among the various wells in the field, on the days on which the wells were permitted to produce, on substantially the following basis:

(a) The field allowable was approximately 521,500 barrels per day.

(b) Wells incapable of making 20 barrels per day, which were classed as marginal wells, were permitted to produce all of the oil they were capable of producing. There were some 559 wells so classified, and they produced approximately 6400 barrels per day.

(c) Wells capable of producing 20 barrels per day, or more, and to which the Commission assigned hourly potentials of less than 865 barrels, were permitted to produce exactly 20 barrels per day. There were some 18,951 such wells to which were allocated approximately 379,000 barrels per day.

(d) Wells which were assigned an hourly potential of 865 barrels, or more, were permitted to produce 2.32% of the assigned hourly potential. There were some 6300 such wells to which were allocated approximately 135,900 barrels per day.

To each non-marginal well was allocated 20 barrels per day. Only between 7000 and 10,000 barrels per day were prorated among the 6300 wells having more that 865 barrels hourly potential. The actual range of allowable was from 20 barrels to slightly less than 26 barrels per day. In substantial effect the order was a per-well order. Under said order and schedules, plaintiff was permitted currently to product 9.932% of the field allowable. Had plaintiff's

[fol. 789] allowable been based on comparative reserves, it would have been 44% higher than it was.

Such allocation gave no separate consideration to acreage, sand thickness, bottom hole pressure, position on structure, the number of acre-feet of oil sand in a lease, or the recoverable reserves under a lease.

17. After a hearing before a statutory three-judge court on plaintiff's motion for preliminary injunction, the court found the order and schedules of June 19, 1939, unreasonable, confiscatory and void as to plaintiff, and on August 12, 1939, granted plaintiff a preliminary injunction, restraining defendants from enforcing said order and schedules against the plaintiff pending final disposition of this action on its merits, and permitting plaintiff to produce 144% of the schedules allowable for each of its wells in the East Texas field. Plaintiff duly executed and filed the required bond which was approved by the court. Plaintiff produced oil for a few days under the terms of the preliminary injunction. It was stipulated on the trial of this action on its merits that the defendants would never seek to enforce against plaintiff any fines, penalties or forfeitures, or to take any other action against plaintiff because of its having produced oil from its wells in the East Texas field to the extent that it was permitted to produce under the terms of the preliminary injunction.

VII

Allowable Schedules and Basis of Allocation under Orders of September 11 and September 29, 1939 and January 24, 1940

18. The Commission's proration orders for the East Texas field of September 11 and September 29, 1939 and January 24, 1940, and the schedules issued in connection therewith, are all substantially the same. Accompanying them were shut down orders, the shut down order of January 24, 1940, closing all wells in the East Texas field, except wells classed as marginal wells, for twelve days during the month of February, 1940.

[fol. 790] 19. The salient provisions of such proration orders and schedules are:

(a) They fixed a top allowable of approximately 691,000 barrels daily for the field.

(b) They allotted 20 barrels per day to each well capable of making that many barrels, or more. There were some 25,456 wells of this kind to which were allotted approximately 509,000 barrels per day under this particular clause of the order.

(c) To wells incapable of making 20 barrels per day they allotted what they could make. These wells were classed as marginal wells. There were some 514 such wells to which were allotted some 6245 barrels per day.

(d) The balance of the field allowable, amounting to about 176,000 barrels per day, was allocated among wells capable of making more than 20 barrels per day. Each such well received in addition to 20 barrels per day, an amount determined by multiplying the proratable oil, approximately 176,000 barrels per day, by a fraction whose numerator was the product of the well's hourly potential by its bottom hole pressure by the thickness of the saturated Woodbine sand underlying the well by the average number of acres per well in the lease, and whose denominator was the sum of such products for all of the wells in the field.

Thus, less than 1% of the field allowable was allocated to so-called marginal wells. About three-fourths of the field allowable was allocated among wells on a flat per-well basis of 20 barrels per day, and about one-fourth of the field allowable was allocated among those wells capable of making more than 20 barrels per day by use of the formula described in (d) above. All wells classed as non-marginal wells were permitted to produce only 17 days during February, 1940. The average actual daily allowable for the [fol. 791] field and for the individual wells was reduced accordingly.

VIII

Losses Sustained by Plaintiff under Existing Order and Schedules

20. Following is a comparison of plaintiff's allowables under the order of June 19, 1939, and the order of January 24, 1940:

Field	Plaintiff	Percent
522,000 b/d	52,000 b/d	9.932%
691,000 b/d	77,000 b/d	11.17%

Plaintiff's increase due to increase in the top allowable for the field was 16,600 b/d, or 66% of its total increase. Plaintiff's increase due to distribution under the formula in February order was 8,400 b/d, or only 34% of its total increase, or about 9% of its allowable.

21. While plaintiff owns at least 14.3% of the remaining recoverable oil reserves in the field, as stated above, its current scheduled allowable is only 11.17% of the current scheduled allowable for the field. Considering shut-downs, its current actual allowable is 11.11% of the current actual allowable for the field. On the basis of comparative reserves, and considering the position of plaintiff's properties on structure, because of which some will produce less and some more than the reserves under them at the present time, plaintiff is nevertheless currently deprived of an opportunity to produce 3.13% of the field schedule allowable or 3.19% of the field's actual allowable. This amounts to a restriction of about 29% on plaintiff's current allowable.

22. (a) As stated above, the flat allowable of 20 barrels per well per day consumes approximately ¾ths of the field allowable, and only about ¼th of the field allowable is apportioned among wells under the formula mentioned in Paragraph 19 (d). The poorer wells and properties, as well as the better wells and properties, share in this apportion-
[fol. 792] ment; that is the poorer wells and properties are permitted to receive an allowable over and above the flat 20 barrel minimum. The discriminations complained of result almost entirely from the use of the 20 barrel minimum. No good reason is shown why a minimum per-well allowable of 20 barrels per day, is necessary. If the entire field allowable were apportioned in accordance with the factors mentioned in Paragraph 19(d) with no per-well minimum, plaintiff's properties would be permitted currently to produce slightly in excess of 14.3% of the current field allowable. It appears that, without using the per-well minimum, the factors employed can be given such values in a formula that a reasonable method of distribution can be effected.

(b) As a consequence of the method of allocation used, densely drilled leases in any part of the field receive much more allowable in proportion to reserves than neighboring leases less densely drilled; and leases in the eastern and

western portions of the field, where the oil sand is relatively thin, are allotted much higher allowables in proportion to their reserves than are leases in the fairway where the oil sands are thickest and the reserves greatest. The so-called fairway properties, except those which are very densely drilled, are being and will be severely drained by the leases lying in the eastern part of the field. Under the existing order, or orders similar thereto, the less densely drilled areas and particularly leases in the fairway, are not afforded an opportunity currently to recover their fair share of the oil, and probably will not ultimately be afforded an opportunity to recover substantially the equivalent of the recoverable reserves under them; while the densely drilled leases and leases particularly in the eastern portion of the field are currently afforded an opportunity to recover far in excess of their fair share, and ultimately will probably be afforded an opportunity to produce far in excess of the equivalent of the reserves underneath them.

[fol. 793] (c) Under open flow conditions, properties in the fairway would have a distinct advantage over properties on the west side and properties on the east side of the field in enjoying recoveries in comparison with reserves. This is because, under open flow conditions, water would rapidly encroach and flood the oil sands on the west, and pressures would rapidly decline in the eastern portion of the field, while in the fairway water encroachment and pressure decline would be delayed. No sufficient explanation has been given as to why it is necessary, under conditions of control, to restrict fairway properties and wells and to favor west side and particularly east side properties and wells in such manner as to bring about the result complained of by plaintiff.

23. Under the orders and schedules complained of by plaintiff, assuming that the wells on tracts adjacent to each other have identical potentials, pressures, sand thickness and reserves, a 5-acre lease with five wells on it on the west side of the field would be permitted to produce about 5 times as much oil per day as an adjoining 5-acre lease with only 1 well on it; a 5-acre lease in the fairway with 5 wells on it would be permitted to produce about 3 times as much oil per day as an adjoining 5-acre lease with 1 well on it; a 5-acre lease on the east side of the field with 5 wells on it would be permitted to produce about 5 times as much oil per day as

an adjoining 5-acre lease with 1 well on it. This is representative of what actually takes place. Moreover, most leases on the west side and practically all, if not all of the leases on the east side of the field are permitted to produce several times as much oil per day in comparison with reserves as are leases in the fairway, excepting those fairway leases which are very densely drilled.

In general, this results in severe drainage from leases in the fairway to leases in other parts of the field, or, to put it another way, the result is that, in general, leases in the [fol. 794] fairway are not permitted to obtain current, and may not obtain ultimate, recoveries on a basis comparable to recoveries permitted to leases in other parts of the field. Plaintiff's leases, for the most part, are located in the fairway, and this accounts in a large measure for the severe drainage that its leases are currently suffering under the existing orders and schedules, and will probably ultimately suffer if such orders and schedules are maintained in force.

24. The arbitrary allocation of about three-fourths of the field allowable on a flat per well basis of 20 barrels bears no relation to the prevention of physical waste, and is not justified by the necessities of the case.

IX

Plaintiff Has Enough Wells

25. Plaintiff having drilled its leases to an average density of approximately one well to 5.8 acres, already has more than enough wells to recover efficiently and effectively, without waste, the recoverable oil in its leases, and to produce its proper share of the allowable production. One well will effectively drain more than 10 acres on each of plaintiff's leases, and already it has drilled each of its leases to a density of less than 10 acres. The main factor working for prevention of waste in the East Texas field is the maintenance of a top allowable not materially exceeding the present figure with respect to total liquids produced. The per-well method of distribution tends to cause waste as a result of concentrated withdrawals where drilling is dense.

X

Drilling and Production Costs in the East Texas Field

26. It costs about $10,000.00 to drill and equip an oil well in the East Texas field. It costs about $2500.00 to equip a

well with pumping equipment. Most pumping wells in the East Texas field can be operated at a profit on a daily pro- [fol. 795] duction of as little as 5 barrels each. Many pumping wells in the field have been operated over a period of years on an average production of less than 5 barrels per day. A few pumping wells, if producing large quantities of water, may not be able to operate at a profit if producing no more than 5 barrels of oil per day; but if such wells were closed in, practically all, if not all, of the recoverable oil in the tracts on which such wells are located could be produced by other wells, and no substantial waste would result from the abandonment of such wells. Flowing wells in the East Texas field can be operated at a profit on less than 5 barrels per day average production.

27. Practically all wells in the field have been drilled more than two years, and have produced more than a sufficient amount of oil to pay for the cost of drilling, equipping and operating such wells. Some of the wells drilled within two years from this date have doubtless paid out, while many of the wells drilled less than two years ago have in a large measure paid out.

XI

Efforts of the Plaintiff to Obtain Relief From the Commission

28. Plaintiff has repeatedly and diligently endeavored to obtain administrative relief from the Railroad Commission of Texas, and to secure an adjustment of the allowable for its wells in the East Texas field in such manner as to afford it an opportunity currently and ultimately to produce its fair share of the oil from the field. In spite of such efforts the defendant Commission has failed and refused to grant to plaintiff the relief sought.

XII

Confiscation and Irreparable Injury

29. The program of regulation outlined above results in the taking of plaintiff's property and giving it to others, without any compensation and without any reasonable necessity. Plaintiff is deprived of a reasonable opportunity [fol. 796] to produce currently a very substantial quantity

of oil which it would be entitled to produce under a proper method of regulation. The loss to plaintiff under such a program amounts to a very large figure daily, and will probably amount to an enormous figure over a period of years if the program be continued. Even if plaintiff should be authorized to drill additional wells in an effort to increase its percentage of allowable production, and even if plaintiff should elect to drill such wells, it is mere speculation to say that its allowable would be materially increased, for it is reasonably certain that other operators would likewise be given permits to drill, and the result would be nothing more than further useless expenditure for wells, with little or no relative change in the distribution of the allowable as far as plaintiff is concerned. Since plaintiff already has enough wells to produce efficiently its allowable, should it be required to drill additional wells as a prerequisite to obtaining its proper allowable, confiscation would result to the extent of the unnecessary expenditure. There is nothing in the orders or program of the Commission which even suggests that the losses already incurred by plaintiff, and to be incurred by the present program, can or will be offset by increasing the allowable of the plaintiff in the future in order to make up for any losses which have occurred or may hereafter occur.

30. The regulation by the Commission does not allocate or distribute the allowable production for the field on a reasonable basis, and is arbitrary, discriminatory, confiscatory, and unreasonable as applied to plaintiff. It denies to plaintiff a reasonable opportunity to recover its fair share of the oil ultimately, much less within a reasonable time, resulting in a daily loss of many thousand barrels of oil worth many thousand dollars.

[fol. 797] B.

CONCLUSIONS OF LAW

In view of the facts found above, concerning which there really is little or no dispute in the evidence, the following conclusions of law are applicable:

1. This court has jurisdiction of the persons and subject matter involved in this action.

2. Subject to the interests of its royalty holders, plaintiff is the owner of the oil and gas in place under its leases in the East Texas field.

3. As the owner of its several leases in the East Texas field, the plaintiff is legally entitled currently and ultimately to produce its fair share of the oil produced from the field.

4. Under the statutes of Texas, Articles 6023, 6029 and Section 7 of Article 6049-c, Vernon's Annotated Revised Civil Statutes, the Railroad Commission is the administrative agency charged with the duty of preventing waste; and in administering the conservation statutes is required to apportion or allocate production of oil among properties in each field "on a reasonable basis."

5. The order of the Commission of June 19, 1939, for the East Texas field, and the schedules issued in connection therewith, as interpreted, applied and enforced against plaintiff, were unreasonable and void as to plaintiff. They did not afford to plaintiff an opportunity to recover its fair share of the oil. As to plaintiff they did not allocate the production in the field on a reasonable basis as required by the Texas Statutes; and they deprived plaintiff of its property without due process of law and denied to it the equal protection of the laws contrary to the Fourteenth Amendment to the Constitution of the United States.

6. The orders of the Commission of September 11 and September 29, 1939, and January 24, 1940, and the schedules issued in connection therewith for the East Texas field, as [fol. 798] interpreted, applied and enforced against plaintiff (such orders and schedules being often referred to herein as the Commission's program of regulation for the field) are unreasonable, discriminatory, confiscatory and void as to plaintiff. As to plaintiff, they do not allocate the production in the field on a reasonable basis, as required by the statutes of Texas referred to in the preceding paragraph.

7. The program of regulation complained of by plaintiff does not within reasonable limits protect the property rights or privileges of plaintiff; it does not give to plaintiff the opportunity to produce currently its fair share, or prevent reasonably avoidable drainage of its properties considered as a whole, although plaintiff has more than enough wells already drilled on its properties from which its fair share can be produced without waste. To require plaintiff to drill any further or additional wells upon its properties would be to require plaintiff to make unnecessary and

wasteful expenditures of money and, in itself, would be a confiscation of plaintiff's property.

8. Such program of regulation operates to confiscate plaintiff's property, and unreasonably discriminates against plaintiff, contrary to the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States; and such program of regulation is void as far as plaintiff is concerned. It is not necessary to prescribe and enforce such a program of regulation against plaintiff in the East Texas field in order to prevent physical waste of oil and gas, or for any other reason.

9. Plaintiff is currently suffering immediate and irreparable injury under such program of regulation, and, so long as such program is maintained in force and effect, will continue to suffer irreparable injury, unless the defendants are enjoined from enforcing such a program of regulation against plaintiff in the East Texas field. Plaintiff is without an adequate remedy at law to protect itself against [fol. 799] losses which have occurred and which will continue to occur under the program of regulation now in vogue. Furthermore, the Texas Statutes (Acts of 1935, 44 Leg., Reg. Sess. p. 180, c. 76, Sec. 14; Sec. 8 of Article 6049c of Vernon's Annotated Revised Civil Statutes of Texas) apparently recognize that no adequate remedy at law exists in such an instance, for the statutes specifically authorize a suit for injunction against the Commission and the members thereof in a court of competent jurisdiction in Travis County, Texas, by any interested person affected, for the purpose of testing the validity of any statute, rule, regulation or order relating to the conservation of oil and gas. This court is a court of competent jurisdiction in Travis County, Texas.

10. The marginal well statute (Acts of 1931, 42nd. Leg., Reg. Sess., p. 92, C. 58; Article 6049b of Vernon's Annotated Revised Civil Statutes of Texas) is not patently invalid. Since it appears that less than 1% of the total daily allowable production from the field is allotted to marginal wells as defined by the Commission, the court finds it unnecessary to pass upon the validity of said marginal well law. There is nothing, however, in the marginal well law which requires the Commission to use the method of distribution and program of regulation now in vogue, or which prohibits the

Commission from limiting non-marginal wells below the minimum allowable applicable to true marginal wells as defined by the statute.

11. The Texas statute, cited in Section 9 of these Conclusions of Law, provides that any interested person who is dissatisfied with the effect upon him of any statute, rule, regulation or order relating to the conservation of oil or gas may institute suit for injunction to test the validity of such statute, rule, regulation or order. The statute does not require that the complaining party first seek relief from the Commission, with respect to its acts which are claimed to be invalid, as a prerequisite to the seeking of an injunction. Furthermore, if the statute be properly interpreted [fol. 800] to mean that relief should first be sought from the Commission, and even conceding that, as a general rule, relief from a court should not be sought if the same relief could promptly be obtained by application to the administrative agency (Commission in this instance), then it appears that plaintiff, an interested person, has already sought such relief from the Commission and has fully exhausted its administrative remedy without obtaining relief.

12. The record shows virtually no dispute as to the facts. The law being clear as applied to such facts, the court finds that an injunction should issue, substantially as prayed for by plaintiff enjoining defendants from enforcing, or attempting to enforce, the orders and schedules complained of against plaintiff or its properties in the East Texas field, or from suing for or otherwise attempting to claim or collect penalties, or to enforce forfeiture, or in any other manner to penalize plaintiff or the oil produced as set forth in the final judgment to be entered in this action as directed by the court.

The final judgment is directed accordingly.
Done as of date March 19th, 1940.

(Signed) Saml. H. Sibley, Circuit Judge; James V. Allred, District Judge; Robert J. McMillan, District Judge.

[File endorsement omitted.]

[fol. 801] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR STAY OF JUDGMENT—Filed March 1, 1940

To said Honorable Court:

Come now the defendants, the Railroad Commission of Texas and Lon A. Smith, Ernest O. Thompson and Jerry Sadler, the Members of the Railroad Commission of Texas, and Gerald C. Mann, Attorney General of Texas, in their official and individual capacities, and respectfully move the court to grant a stay of its judgment, and as grounds for this motion, defendants say:

I

This court on February 21, 1940, announced its decision to enter a judgment granting to the plaintiff, Humble Oil & Refining Company, a final injunction restraining the defendants from enforcing or attempting to enforce the proration orders of the Railroad Commission of Texas attacked in this action by the plaintiff, or any similar orders substantially the same as the orders attacked by the plaintiff in its supplemental complaint. Defendants desire to prosecute an appeal from such judgment to the Supreme Court of the United States. Defendants say that in equity and good conscience the injunction of the court should be stayed pending a reasonable time within which the defendants may perfect their appeal to the Supreme Court of the United States, and pending the final determination of such appeal, for the following reasons:

[fol. 802] (1) A stay of the judgment of the court should be granted in order that defendants' right of appeal may not be rendered practically ineffective and in order that serious and irreparable injury may not be done to the defendants and to the East Texas oil field and the oil industry of the State of Texas as a whole.

(2) The effect of the judgment of the court, granting an injunction against the enforcement of the proration orders of the Railroad Commission of Texas for the East Texas field, will be to destroy and not to preserve the status quo. Even if the court restricts the production of the Humble Oil & Refining Company to a production from its leases of about twenty-five or thirty per cent more than

it is permitted to produce under the present orders of the Railroad Commission, the result will be to add approximately 25,000 barrels to the daily production from the East Texas field, and there will be an inequality of production between the Humble Oil & Refining Company and leases located adjacent to the properties of Humble Oil & Refining Company and with other properties similarly situated. By granting a stay of said judgment and by suspending the operation and execution of the injunction, pending an appeal, this court will preserve the status quo until the validity of the proration orders of the Railroad Commission can be finally determined by the Supreme Court of the United States.

(3) Said judgment should be stayed because a state of great inequity, uncertainty and confusion in the East Texas oil field will be prevented by staying said judgment. While the court does not hold the proration order invalid except as to the plaintiff in this case, it is evident that if the court's judgment is finally affirmed, there must be a complete revision of the proration orders of the Railroad Commission applicable to the East Texas oil field. The property rights of the owners and operators in the East Texas field will be uncertain until a final determination of [fol. 803] this cause by the Supreme Court of the United States can be obtained. Unless a stay is granted, a situation of inequality between the Humble Oil & Refining Company and other operators, whose properties are adjacent to the properties of Humble Oil & Refining Company, or whose properties are similarly situated, will be created, by reason of the fact that the Humble Oil & Refining Company will be allowed to produce a larger proportionate share of the allowable production from the field than other similarly situated. Such operators will be faced with the alternative of complying with the orders of the Railroad Commission and receiving a smaller proportionate share of the total field allowable than the Humble Oil & Refining Company and having their properties drained by plaintiff, or of filing suit against the Railroad Commission to enjoin the enforcement of the proration orders of the Railroad Commission and having the District Court fix the amount of oil which such operators can produce. Since the court is obviously without power to promulgate a general proration order applicable to the East Texas field, and

since each of such suits must be determined upon the particular facts in such suit, it will inevitably result that there will be much confusion and great inequality among the various operators in the East Texas field. Such inequality, confusion and uncertainty can be prevented if a stay is granted so that all operators will continue to receive the amounts allowed by the present proration order until the validity of such order can be finally determined by the Supreme Court of the United States. After the appeal is finally determined by the Supreme Court of the United States, the Railroad Commission will then be able to formulate and promulgate an order which will comply with the law as finally settled by that court and which will be equally applicable to all operators within the field.

[fol. 804] (4) The plaintiff will not suffer any irreparable injury from a continuation of the present method of proration pending this appeal. On November 10, 1939, a three-judge court, composed of Judge Foster, Judge Kennerley, and Judge Atwell, refused a temporary injunction to the plaintiff on the ground that it was not shown that irreparable injury would be done to the plaintiff pending a hearing on the merits. An appeal to the Supreme Court of the United States would be prosecuted promptly and with expedition by the defendants, and the defendants would make motion to advance such appeal, and a final determination of this case by the Supreme Court of the United States could probably be obtained within a period of three or four months. The evidence in this case shows that according to the estimates of its own engineers, the depletion of the Humble Oil & Refining Company's leases amounts to approximately the same amount as has been produced from its leases, and in a large percentage of its leases, it still has in place substantially as much oil as was originally in place beneath such leases. The rate of withdrawal from the East Texas field under the present method of proration is comparatively slow, and the plaintiff will suffer very little drainage, if any, from any of the surrounding tracts during the time which will elapse before a final determination before the Supreme Court of the United States can be obtained.

(5) Any damage or injury which may result to the plaintiff as a result of the stay of the judgment entered by the court in this case will be greatly outweighed by the

injury which will be done to the defendants and to operators in the East Texas field, and to the oil industry in the State of Texas as a whole, by reason of the confusion, uncertainty and inequality which will be caused if plaintiff is allowed to produce a greater proportion of oil, during the pendency of this appeal, than the remaining operators in the East Texas [fol. 805] field. If a stay of the court's judgment is granted, it will be unnecessary for other operators in the East Texas oil field to file suits in order to protect their leases from drainage. If a stay is refused however a great number of lawsuits will inevitably be filed by persons similarly situated to the Humble Oil & Refining Company. Such lawsuits will necessarily be very complicated and very expensive to the Railroad Commission of Texas and will require a large expenditure of public funds in the defense of such cases. Such multiplicity of suits can be prevented by staying the judgment of this court pending appeal. More important however than such expense and the direct effect upon the defendants, is the effect of such refusal to grant a stay upon the other operators in the East Texas field and the oil industry in the State of Texas and throughout the nation. The effect of prorating the field by court injunction will be not only to create a state of confusion and inequality, but also to greatly increase the total production from the East Texas field, to the point where there will probably be a large amount of physical waste of oil and gas. In effect, all efforts to regulate and prorate production of oil from the East Texas field will be suspended pending the appeal, unless a stay of the court's judgment is granted. The Railroad Commission has received information which causes it to believe that if this stay is not granted there will be immediately a number of suits filed which will involve a large percentage of the producing acreage in the East Texas oil field.

(6) Unless a stay is granted, there will be no method whereby the parties can be restored to their present position in the event the judgment of the trial court is reversed by the Supreme Court of the United States. If the Humble Oil & Refining Company is permitted to produce oil in excess of its present allowables pending an appeal, in the [fol. 806] event the judgment of this court is reversed there will be no method of restoring to the adjoining land owners the oil which the Humble Oil & Refining Company

will drain from underneath their tract by reason of their increased allowable. Nor will there be any method whereby the Railroad Commission can require the Humble Oil & Refining Company to reduce its future allowable so as to account for the excess oil which it will have produced pending appeal, and the judgment of the Supreme Court of the United States will to such extent be rendered ineffective.

II

Defendants say that they have no personal interest in the case, but that they are prosecuting the same in order to have a final determination of the validity of the method of proration involved in the orders of the Railroad Commission of Texas under attack in this State. Defendants have no method under the laws of the State of Texas whereby they can make a supersedeas bond, in their official capacity as Members of the Railroad Commission of Texas, or as Attorney General of Texas. Defendants say it would be impossible for them individually to make a bond and that it would be unjust to require them to submit to personal liability as a condition of obtaining a stay of judgment, where, in effect, the appeal can be effective only if the stay is granted.

Wherefore, defendants pray that this court stay the operation and execution of the permanent injunction against the enforcement of the proration orders of the Railroad Commission of Texas as applicable to the East Texas oil field, during a reasonable time in which defendants may perfect their appeal to the Supreme Court of the United States, and pending a final determination of such appeal by said court, that no bond be required of defend-
[fol. 807] ants as a condition for such stay, and for such other relief as may be proper in the premises.

Gerald C. Mann, Attorney General of Texas; James P. Hart, Assistant Attorney General; Edgar Cale, Assistant Attorney General; E. R. Simmons, Assistant Attorney General; Tom D. Rowell, Jr., Assistant Attorney General, Attorneys for Defendants, Austin, Texas.

Duly sworn to by F. V. L. Patten. Jurat omitted in printing.

Proof of Service

Service of the foregoing motion was made by me by delivering a copy thereof to Rex Baker, Esq., at the United States Court House on the 1st day of March, 1940, at 2 o'clock p. m.

James P. Hart, Attorney for Defendants.

[fol. 808] [File endorsement omitted.]

[fol. 809] In United States District Court

[Title omitted]

Petition for Appeal—Filed April 1, 1940

To said Honorable Court:

Now comes the defendants, the Railroad Commission of Texas, and Lon A. Smith, Ernest O. Thompson and G. A. Sadler, Members of the Railroad Commission of Texas, and Gerald C. Mann, Attorney General of Texas, in their official and individual capacities, and feeling themselves aggrieved by the judgment of this court entered herein on the 19th day of March, 1940, granting a permanent injunction in favor of the plaintiff and against the defendants, pray an appeal therefrom to the Supreme Court of the United States.

The particulars wherein they consider the said judgment erroneous are set forth in their assignment of errors on file and which accompanies this petition.

Wherefore, your petitioners pray that an appeal in their behalf to the Supreme Court of the United States for the correction of errors complained of and herewith duly assigned be allowed; that an order be made fixing the amount of the security to be given by these defendants as appellants and conditioned as the law requires; and they pray a reversal of said judgment and for such other and further relief as shall be just and proper.

Dated this 1st day of April, 1940.

(S.) Gerald C. Mann, Attorney General of Texas; (S.) James P. Hart, Assistant Attorney General; [fol. 810] (S.) E. R. Simmons, Assistant Attorney General; (S.) Edgar Cale, Assistant Attorney General; (S.) Tom D. Rowell, Jr., Assistant Attorney General, Attorneys for Defendants, Austin, Texas.

[File endorsement omitted.]

[fol. 811] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed April 1, 1940

To Said Honorable Court:

Now come the defendants, the Railroad Commission of Texas, and Lon A. Smith, Ernest O. Thompson and G. A. Sadler, members of the Railroad Commission of Texas, and Gerald C. Mann, Attorney General of Texas, in their individual and official capacities and in connection with their petition for appeal file the following assignment of errors on which they will rely on their appeal to the Supreme Court of the United States from the final judgment of the three-judge District Court entered on March 19, 1940, granting a permanent injunction in favor of the plaintiff and against the defendants.

The said three-judge District Court erred:

1

In holding that the proration orders of the Railroad Commission of Texas of September 11, 1939, September 29, 1939, and January 24, 1940, and the schedules issued in connection therewith for the East Texas field, as interpreted, applied and enforced against the plaintiff, are unreasonable, discriminatory, confiscatory and void as to plaintiff.

[fol. 812] 2

In holding that the orders of the Railroad Commission of September 11, 1939, September 29, 1939, and January 24, 1940, and the schedules issued in connection therewith for the East Texas field, as interpreted, applied and enforced against plaintiff, do not allocate the production in the field on a reasonable basis, as required by the statutes of the state of Texas.

3

In holding that the orders of the Railroad Commission of September 11, 1939, September 29, 1939, and January 24, 1940, and the schedules issued in connection therewith for the East Texas field, as interpreted, applied and enforced against the plaintiff, operate to confiscate plaintiff's prop-

erty and unreasonably discriminate against plaintiff, contrary to the due process and equal protection clauses of the 14th amendment to the Constitution of the United States.

4

In holding that the order of the Railroad Commission of June 19, 1939, for the East Texas field, and the schedules issued in connection therewith, as interpreted, applied and enforced against the plaintiff, were unreasonable and void as to plaintiff and did not allocate the production in the field on a reasonable basis as required by the Texas statutes.

5

In holding that the order of the Railroad Commission of June 19, 1939, for the East Texas field, and the schedules issued in connection therewith, as interpreted, applied and enforced against the plaintiff, deprived the plaintiff of its property without due process of law and denied to it the equal protection of the laws contrary to the 14th amendment to the Constitution of the United States.

[fol. 813] 6

In holding that the plaintiff is legally entitled to recover currently an amount of oil which is in the same proportion to the total allowable for the East Texas field as the estimated recoverable oil underneath the plaintiff's lease, is to the estimated recoverable oil under the East Texas field as a whole.

7

In holding that the plaintiff is currently suffering immediate and irreparable injury from the enforcement of the orders of the Railroad Commission of September 11, 1939, September 29, 1939, and January 24, 1940.

8

In holding that the plaintiff is without an adequate remedy at law to protect itself against alleged losses to the plaintiff under the program of regulation attacked in this action.

9

In holding that the right to apply to the Commission for permission to drill additional wells as exceptions to the

spacing rules of the Railroad Commission does not constitute an adequate administrative remedy whereby the plaintiff can protect himself against loss and increase its share in the allowable production from the East Texas field.

10

In holding that the plaintiff is entitled to injunctive relief from the court, although plaintiff wholly failed to allege or prove that it had applied to the Railroad Commission for permits to drill additional wells upon its leases, or that the Railroad Commission had refused to grant it such permits.

11

In holding that the plaintiff has exhausted its administrative remedy before seeking injunctive relief from this court.

[fol. 814]

12

In permanently enjoining the defendants from enforcing or attempting to enforce the proration orders and schedules complained of against the plaintiff and its properties in the East Texas field.

13

In permanently enjoining the defendants from enforcing or attempting to enforce the proration orders promulgated by the Railroad Commission of Texas on September 11, 1939, September 29, 1939, and January 24, 1940, and the schedules issued in connection therewith for the East Texas oil field, and any other orders having substantially the same effect.

14

In finding, without sufficient evidence to support said finding, that the plaintiff has been permitted in the past to recover only 11/15ths as much oil per acre foot of its oil sand depleted as the field as a whole has been permitted to produce per acre foot of sand depleted.

15

In finding, without sufficient evidence to support said finding, that the plaintiff is currently deprived of an opportunity to produce 3.13 per cent of the field scheduled allowable or about 3.19 per cent of the field's actual allowable.

16

In finding, without sufficient evidence to support said finding, that there is no good reason why a minimum per well of 20 barrels per day is necessary in prorating the allowable production of the East Texas field.

17

In finding, without sufficient evidence to support said finding, that a reasonable method of distribution of the allowable production in the East Texas field can be made [fol. 815] without using any per well minimum allowable.

18

In finding, without sufficient evidence to support said finding, that the properties in the "fairway" of the East Texas field, except those which are very densely drilled, are being and will be severely drained by the leases lying in the eastern part of the field.

19

In finding, without sufficient evidence to support said finding, that the proration orders attacked by the plaintiff do not afford to properties in the "fairway" of the East Texas field an opportunity currently to recover their fair share of the oil.

20

In finding, without sufficient evidence to support said finding, that under the proration orders attacked by the plaintiff the properties in the "fairway" in the East Texas field will probably not ultimately be allowed an opportunity to recover substantially the equivalent of the recoverable reserves under them.

21

In finding, without sufficient evidence to support said finding, that it is not necessary to restrict "fairway" properties and wells in order to protect the west side and east side properties from drainage.

22

In finding, without sufficient evidence to support said finding, that most pumping wells in the East Texas field can

be operated at a profit on a daily production of as little as five barrels each.

23

In finding, without sufficient evidence to support such finding, that if pumping wells, producing water, should be [fol. 816] closed in by a restriction of their daily allowable, practically all of the recoverable oil in the tract on which such wells are located would be produced by other wells and no substantial waste would result from the abandonment of such wells.

24

In finding, without evidence to support such finding, that practically all wells in the field have been drilled more than two years and have produced more than a sufficient amount of oil to pay for the cost of drilling, equipping and operating such wells.

25

In finding, without sufficient evidence to support such finding, that the loss to the plaintiff under the present method of proration amounts to "a very large figure daily."

26

In finding, without sufficient evidence to support said finding, that the loss to the plaintiff under the present method of proration will probably amount to "an enormous figure" over a period of years if the program be continued.

27

In finding, without sufficient evidence to support said finding, that, under the operation of the present program of proration in the East Texas field, the plaintiff's share in the allowable will not increase in the future as properties on the west side of the field are depleted.

28

In finding, without sufficient evidence to support said finding, that the orders of the Railroad Commission attacked by the plaintiff result "in a daily loss of many thousand barrels of oil worth many thousand dollars" to plaintiff.

29

In finding, without sufficient evidence to support such finding, that a well drilled in the East Texas field will effectively [fols. 817-868] drain an area of at least 10 acres.

30

In the rendition of the final judgment in this action filed and entered March 19, 1940.

Wherefore, Defendants pray that said judgment be reversed, and for such other and further relief as to the court may seem just and proper.

(s) Gerald C. Mann, Attorney General of Texas. James P. Hart, Assistant Attorney General. E. R. Simmons, Assistant Attorney General. Edgar Cale, Assistant Attorney General. Tom D. Rowell, Jr., Assistant Attorney General, Attorneys for Defendants, Austin, Texas.

[File endorsement omitted.]

[fol. 869] In United States District Court

[Title omitted]

Order Allowing Appeal—Filed April 1, 1940

It appearing to the court that the defendants, the Railroad Commission of Texas, and Lon A. Smith, Ernest O. Thompson and G. A. Sadler, Members of the Railroad Commission of Texas, and Gerald C. Mann, Attorney General of Texas, in their official and individual capacities, have filed their petition for appeal to the Supreme Court of the United States and have filed their assignment of errors and also their statement as to the jurisdiction of the Supreme Court of the United States as required by Rule 12 of the Supreme Court rules, duly disclosing that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment in question;

It Is Therefore Ordered by the Court that the appeal prayed for be and the same is hereby allowed to the Supreme Court of the United States from the judgment en-

tered in said cause on the 19th day of March, 1940, granting a permanent injunction in favor of the plaintiff and against the defendants upon the defendants' giving a bond with good and sufficient security in the sum of $500.00, conditioned as required by law.

Dated this 1st day of April, 1940.

(s) Robert J. McMillan, Judge, District Court of the United States for the Western District of Texas.

[fol. 870] [File endorsement omitted.]

[fols. 871-872] Citation in usual form showing service on Rex G. Baker, filed April 2, 1940, omitted in printing.

[fols. 873-874] Bond on Appeal for $500.00 approved and filed April 2, 1940, omitted in printing.

[fol. 875] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO RECORD ON APPEAL—Filed April 9, 1940

Pursuant to the provisions of Section 2 of Rule 10 of the Rules of the Supreme Court of the United States it is stipulated by the parties to this action that the following parts of the record, proceedings and evidence shall be included in the record on appeal:

1. Plaintiff's complaint.

2. Order constituting and assembling three-judge court, dated July 26, 1939.

3. Writ to serve copies of complaint, etc., on W. Lee O'Daniel, Governor, and marshall's return thereon, dated July 27, 1939.

4. Defendants' answer to plaintiff's complaint.

5. Order granting preliminary injunction, August 11, 1939.

6. Plaintiff's supplemental complaint.

7. Amended order re-constituting and reassembling three-judge court, October 5, 1939.

8. Writ to serve copies of supplemental complaint, etc., on W. Lee O'Daniel, Governor, and marshall's return thereon, dated October 6, 1939.

9. Defendants' answer to plaintiff's supplemental complaint.

[fol. 876] 10. Findings of fact and conclusions of law in connection with the court's order denying plaintiff a second interlocutory injunction, said order being dated November 10, 1939.

11. Order dated November 10, 1939, denying plaintiff's application for a second interlocutory injunction.

12. Order reconstituting and reassembling three-judge court for trial on merits.

13. The reporter's transcript of the evidence, certified by H. P. Bickler, Court Reporter.

14. Opinion of the court, after trial on the merits, February 21, 1940.

15. Final judgment of the court, entered March 19, 1940.

16. Findings of fact and conclusions of law, dated March 19, 1940.

17. Defendants' motion for a stay pending appeal.

18. Defendants' petition for appeal.

19. Defendants' assignment of errors.

20. Defendants' statement as to jurisdiction as required by Rule 12 of the Rules of the Supreme Court of the United States.

21. Order allowing appeal.

22. Citation on appeal, with acknowledgement of service thereof.

23. Appeal bond.

24. Stipulation of the parties as to the record.

25. Order of the court directing the transmission of original papers and exhibits to the Supreme Court of the United States.

26. Notice of appeal, etc., under Supreme Court Rule 12, and acknowledgment of service thereof, omitting exhibits.

[fols. 877-881] It is further stipulated by the parties that the following papers and exhibits may be transmitted to the Supreme Court of the United States for inspection by that court:

Plaintiff's Exhibits Numbers 1, 2, 3, 4, 5, 6, 9, 11, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29a, 32, 33, and

Defendants' Exhibits Numbers 1, 2, 3, 4, 5, 6, 7, 11, 12, 13, and 14.

Dated this 8th day of April, 1940.

(s) Rex G. Baker, J. A. Rauhut, Attorney- for Plaintiff, Humble Oil & Refining Co. James P. Hart, Attorney for Defendants, Railroad Commission of Texas, Lon A. Smith, Ernest O. Thompson, G. A. Sadler, and Gerald C. Mann, Attorney General of Texas.

[File endorsement omitted.]

[fol. 882] SUPREME COURT OF THE UNITED STATES

STATEMENT OF THE POINTS ON WHICH APPELLANTS INTEND TO RELY AND OF THE PARTS OF THE RECORD WHICH APPELLANTS THINK NECESSARY FOR THE CONSIDERATION THEREOF—Filed April 19, 1940

The appellants intend to rely upon the following points in which it is contended by appellants that the three-judge District Court erred:

1

In holding that the proration orders of the Railroad Commission of Texas of September 11, 1939, September 29, 1939, and January 24, 1940, and the schedules issued in connection therewith for the East Texas field, as interpreted, applied and enforced against the plaintiff, are unreasonable, discriminatory, confiscatory and void as to plaintiff.

2

In holding that the orders of the Railroad Commission of September 11, 1939, September 29, 1939, and January 24, 1940, and the schedule issued in connection therewith for the East Texas field, as interpreted, applied and enforced against plaintiff, do not allocate the production in the field on a reasonable basis, as required by the statutes of the state of Texas.

[fol. 883]

3

In holding that the orders of the Railroad Commission of September 11, 1939, September 29, 1939, and January 24, 1940, and the schedules issued in connection therewith for the East Texas field, as interpreted, applied and enforced against the plaintiff, operate to confiscate plaintiff's property and unreasonably discriminate against plaintiff, contrary to the due process and equal protection clauses of the 14th amendment to the Constitution of the United States.

4

In holding that the order of the Railroad Commission of June 19, 1939, for the East Texas field, and the schedules issued in connection therewith, as interpreted, applied and enforced against the plaintiff, were unreasonable and void as to plaintiff and did not allocate the production in the field on a reasonable basis as required by the Texas statutes.

5

In holding that the order of the Railroad Commission of June 19, 1939, for the East Texas field, and the schedules issued in connection therewith, as interpreted, applied and enforced against the plaintiff, deprived the plaintiff of its property without due process of law and denied to it the equal protection of the laws contrary to the 14th amendment to the Constitution of the United States.

6

In holding that the plaintiff is legally entitled to recover currently an amount of oil which is in the same proportion to the total allowable for the East Texas field as the estimated recoverable oil underneath the plaintiff's lease is to

the estimated recoverable oil under the East Texas field as a whole.

[fol. 884]

7

In holding that the plaintiff is currently suffering immediate and irreparable injury from the enforcement of the orders of the Railroad Commission of September 11, 1939, September 29, 1939, and January 24, 1940.

8

In holding that the plaintiff is without an adequate remedy at law to protect itself against alleged losses to the plaintiff under the program of regulation attacked in this action.

9

In holding that the right to apply to the Commission for permission to drill additional wells as exceptions to the spacing rules of the Railroad Commission does not constitute an adequate administrative remedy whereby the plaintiff can protect himself against loss and increase its share in the allowable production from the East Texas field.

10

In holding that the plaintiff is entitled to injunctive relief from the court, although plaintiff wholly failed to allege or prove that it had applied to the Railroad Commission for permits to drill additional wells upon its leases, or that the Railroad Commission had refused to grant it such permits.

11

In holding that the plaintiff has exhausted its administrative remedy before seeking injunctive relief from this court.

12

In permanently enjoining the defendants from enforcing or attempting to enforce the proration orders and schedules complained of against the plaintiff and its properties in the East Texas field.

[fol. 885]

13

In permanently enjoining the defendants from enforcing or attempting to enforce the proration orders promulgated

by the Railroad Commission of Texas on September 11, 1939, September 29, 1939, and January 24, 1940, and the schedules issued in connection therewith for the East Texas oil field, and any other orders having substantially the same effect.

14

In finding, without sufficient evidence to support said finding, that the plaintiff has been permitted in the past to recover only 11/15th as much oil per acre foot of its oil sand depleted as the field as a whole has been permitted to produce per acre foot of sand depleted.

15

In finding, without sufficient evidence to support said finding, that the plaintiff is currently deprived of an opportunity to produce 3.13 per cent of the field scheduled allowable or about 3.19 per cent of the field's actual allowable.

16

In finding, without sufficient evidence to support said finding, that there is no good reason why a minimum per well allowable of 20 barrels per day is necessary in prorating the allowable production of the East Texas field.

17

In finding, without sufficient evidence to support said finding, that a reasonable method of distribution of the allowable production in the East Texas field can be made without using any per well minimum allowable.

18

In finding, without sufficient evidence to support said finding, that the properties in the "fairway" of the East Texas field, except those which are very densely drilled, are being and will be severely drained by the leases lying in the eastern part of the field.

[fol. 886] 19

In finding, without sufficient evidence to support said finding, that the proration orders attacked by the plaintiff do not afford to properties in the "fairway" of the East

Texas field an opportunity currently to recover their fair share of the oil.

20

In finding, without sufficient evidence to support said finding, that under the proration orders attacked by the plaintiff the properties in the "fairway" in the East Texas field will probably not ultimately be allowed an opportunity to recover substantially the equivalent of the recoverable reserves under them.

21

In finding, without sufficient evidence to support said finding, that it is not necessary to restrict "fairway" properties and wells in order to protect the west side and east side properties from drainage.

22

In finding, without sufficient evidence to support said finding, that most pumping wells in the East Texas field can be operated at a profit on a daily production of as little as five barrels each.

23

In finding, without sufficient evidence to support such finding, that if pumping wells, producing water, should be closed in by a restriction of their daily allowable, practically all of the recoverable oil in the tract on which such wells are located would be produced by other wells and no substantial waste would result from the abandonment of such wells.

24

In finding, without sufficient evidence to support such finding, that practically all wells in the field have been drilled more than two years and have produced more than a sufficient amount of oil to pay for the cost of drilling, equipping and operating such wells.

[fol. 887]

25

In finding, without sufficient evidence to support such finding, that the loss to the plaintiff under the present method of proration amounts to "a very large figure daily".

26

In finding, without sufficient evidence to support said finding, that the loss to the plaintiff under the present method of proration will probably amount to "an enormous figure" over a period of years if the program be continued.

27

In finding, without sufficient evidence to support said finding, that, under the operation of the present program of proration in the East Texas field, the plaintiff's share in the allowable will not increase in the future as properties on the west side of the field are depleted.

28

In finding, without sufficient evidence to support said finding, that the orders of the Railroad Commission attacked by the plaintiff result "in a daily loss of many thousand barrels of oil worth many thousand dollars" to plaintiff.

29

In finding, without sufficient evidence to support such finding, that a well drilled in the East Texas field will effectively drain an area of at least ten acres.

30

In the rendition of the final judgment in this action filed and entered March 19, 1940.

[fol. 888] Appellants designate the following parts of the record which they think necessary to be printed for the consideration of the foregoing points upon which appellants intend to rely:

1. Plaintiff's complaint.
2. Defendants' answer to plaintiff's complaint.
3. Order granting preliminary injunction, August 11, 1939.
4. Plaintiff's supplemental complaint.
5. Defendants' answer to plaintiff's supplemental complaint.
6. Findings of fact and conclusions of law in connection with the court's order denying plaintiff a second inter-

locutory injunction, said order being dated November 10, 1939.

7. Order dated November 10, 1939, denying plaintiff's application for a second interlocutory injunction.

8. The reporter's transcript of the evidence, certified by H. P. Bickler, Court Reporter.

9. Opinion of the court, after trial on the merits, February 21, 1940.

10. Final judgment of the court, entered March 19, 1940.

11. Findings of fact and conclusions of law, dated March 19, 1940.

12. Defendants' motion for a stay pending appeal.

13. Defendants' petition for appeal.

14. Defendants' assignment of errors.

15. Defendants' statement as to jurisdiction as required by Rule 12 of the Rules of the Supreme Court of the United States.

16. Order allowing appeal.

17. Citation on appeal, with acknowledgment of service thereof.

18. Appeal bond.

19. Stipulation of the parties as to the record.

20. Notice of appeal, etc., under Supreme Court Rule 12, and acknowledgment of service thereof, omitting exhibits.

[fol. 889] 21. This statement of points to be relied on and designation of parts of the record to be printed, and acknowledgment of service and stipulation thereon.

Gerald C. Mann, Attorney General of Texas; W. F. Moore, Assistant Attorney General; James P. Hart, Assistant Attorney General, Attorney for Railroad Commission of Texas, et al., Appellants, Austin, Texas.

[fol. 890] Acknowledgment of Service

Service of the foregoing statement of the points on which appellants intend to rely and designation of the parts of the record to be printed is acknowledged by the undersigned attorney for appellee, Humble Oil & Refining Company, this 13th day of April, 1940.

Rex G. Baker, Houston, Texas; J. A. Rauhut, Attorney for appellee, Humble Oil & Refining Company, Austin, Texas.

Stipulation as to Parts of Record to be Printed

The parties stipulate that the parts of the record designated by the appellants in the foregoing designation are the only parts of the record necessary to be printed for a consideration of the points upon which appellants intend to rely. It is further stipulated that all original papers and exhibits transmitted to the Supreme Court of the United States by order of the presiding judge of the District Court are material to the consideration of this case, but that they may be considered in their original form and need not be printed.

Dated this 13th day of April, 1940.

Rex G. Baker, J. A. Rauhut, Attorney- for Humble Oil & Refining Company, Appellee, Houston, Texas.

James P. Hart, Attorney for Railroad Commission of Texas, et al., Appellants, Austin, Texas.

[fol. 891] [File endorsement omitted.]

Endorsed on cover: Enter W. F. Moore. File No. 44337. W. Texas, D. C. U. S. Term No. 57. Railroad Commission of Texas and Lon A. Smith, Ernest O. Thompson, et al., etc., Appellants, vs. Humble Oil and Refining Company. Filed April 19, 1940. Term No. 57, O. T., 1940.

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CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 2705
Sup. Ct.

No. [redacted] 57

RAILROAD COMMISSION OF TEXAS, LON A. SMITH, ERNEST O. THOMPSON, ET AL., ETC.,

Appellants,

vs.

HUMBLE OIL AND REFINING COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

STATEMENT AS TO JURISDICTION.

GERALD C. MANN,
Attorney General of Texas;
JAMES P. HART,
E. R. SIMMONS,
EDGAR CALE,
TOM D. ROWELL, JR.,
Assistant Attorneys General of Texas,
Counsel for Appellants.

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IN THE

DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION

Civil Action No. 31

HUMBLE OIL & REFINING COMPANY,

Plaintiff,

vs.

RAILROAD COMMISSION OF TEXAS, LON A. SMITH, E. O. THOMPSON, AND G. A. SADLER, AND GERALD C. MANN, ATTORNEY GENERAL OF TEXAS, IN THEIR OFFICIAL AND INDIVIDUAL CAPACITIES,

Defendants.

STATEMENT AS TO JURISDICTION AS REQUIRED BY SUPREME COURT RULE 12.

The jurisdiction of the Supreme Court of the United States is invoked under Sections 238 and 266 of the Judicial Code, as amended by the Act of February 13, 1925 (U. S. Code, Title 28, Sections 345 and 380).

The judgment here appealed from was entered by the three-judge District Court on the 19th day of March, 1940. Petition for appeal is herewith presented on the 1st day of April, 1940.

This action was brought by Humble Oil & Refining Company, a Texas corporation, against the Railroad Commission of Texas, and Lon A. Smith, E. O. Thompson, and G. A. Sadler, in their official capacities as members of and composing the Railroad Commission of Texas, and Gerald C. Mann, Attorney General of Texas, in his official capacity as such, and against all of said defendants individually, to enjoin the enforcement of proration orders issued by the Railroad Commission of Texas limiting and prorating the production of oil from the East Texas oil field. The plaintiff sought interlocutory injunctive relief, as well as final injunctive relief, against the Railroad Commission of Texas and the Attorney General of Texas to restrain said officers of the State of Texas in the enforcement and execution of such proration orders made by the Railroad Commission of Texas acting under and pursuant to the statutes of the State of Texas. The plaintiff asserted that such injunctive relief against said officers should be granted upon the ground of the unconstitutionality of such proration orders, because they deprived the plaintiff of its property without due process of law and denied to it the equal protection of the laws in violation of the 14th amendment to the Constitution of the United States.

In its complaint filed in the District Court of the United States for the Western District of Texas, Austin Division, on the 26th day of July, 1939, the plaintiff attacked the validity under the United States Constitution of the proration order of the Railroad Commission of Texas, dated June 19, 1939, in so far as said order fixed the allowable production of oil from the East Texas oil field. The portion of said order which was attacked by the plaintiff in its complaint was as follows:

> "Rule 23 (2) of Division 3, as contained in an order of the Commission dated October 17, 1933, pertaining

to the East Texas Field is hereby re-adopted and amended as follows:

"Whereas, The Railroad Commission of Texas finds from evidence submitted to it at a hearing held in Austin on June 12, 1939, and at previous hearings held before the regulatory body that the reservoir of the East Texas Field has its energy supplied by a hydrostatic drive which encroaches from the west to the east, and only a certain amount of crude oil can be withdrawn daily from the East Texas Reservoir in order to utilize to the greatest extent the energy necessary for the production and recovery of the greatest amount of oil ultimately from the reservoir. It has been recommended to the Commission by competent engineers that not more than 425,000 to 450,000 barrels of crude oil should be allowed to be produced from the East Texas Reservoir in any one day in order that the reservoir might be depleted with the least possible amount of waste incurring. Evidence has also been submitted to the Commission at these hearings that the production of from 425,000 to 450,000 barrels of crude oil will prohibit the coning of water, the uneven encroachment of water, and the subsequent trapping of much oil which otherwise, under higher daily allowables of crude oil, would not be recovered.

"Rule 23. (2) Therefore, It Is Further Ordered By the Railroad Commission of Texas that during each twenty-four (24) hour period beginning at 7 o'clock a. m., Central Standard Time, July 1, 1939, the owner or operator or manager of each well in the East Texas Field shall be permitted, either collectively or individually, to produce daily from each well a maximum of Two and Thirty-two Hundredths Per Cent (2.32%) of its hourly potential capacity as determined by the Commission. Provided, however, that the above order shall not be enforced as to the property of Rowan & Nichols Oil Company, involved in Cause No. 624 in Equity in the United States District Court for the Western District of Texas, Austin Division, insofar as the enforcement of this order is prohibited by the injunction issued by said Court on June 14, 1939, and so long as said injunction is in force and effect."

The contention of the plaintiff in its complaint was that, as applied, construed and enforced by the Railroad Commission of Texas, the said proration order of June 19, 1939, amounted to a proration of the East Texas oil field upon practically a per-well basis, since the Railroad Commission did not apply the formula set forth in the order of June 19, 1939, to any well where the application of said formula would reduce the daily allowable production of such well below twenty barrels a day, and permitted every well, which was capable of producing that amount, to produce at least twenty barrels per day. Plaintiff alleged that it was the owner of not less than 14 per cent of the oil in the field and that it should currently be allowed to produce daily an amount of oil substantially equal to 14 per cent of the total daily field allowable, but that the Railroad Commission under the order of June 19, 1939, permitted the plaintiff to produce currently only approximately 9.932 per cent of the daily field allowable, and thereby deprived the plaintiff of an amount of oil equal to about four per cent of the total daily field allowable.

Upon the filing of the complaint, an order was entered by the Judge of the District Court convening a three-judge District Court for August 10, 1939, to hear the plaintiff's application for a temporary injunction. The three-judge District Court, composed of Circuit Judge Edwin R. Holmes, and District Judges Robert J. McMillan and T. M. Kennerly convened at San Antonio, Texas. The defendants filed a motion for a more definite statement and for a bill of particulars, and raised the defense that the action was premature, in that the plaintiff had not exhausted its administrative remedy since it had applied for an increase in its allowable to the Railroad Commission and the Railroad Commission then had pending before it and set for hearing on August 16, 1939, the plaintiff's application for an increase in the allowable on its leases. The defendants also

filed their answer, alleging that the proration order complained of was reasonable and fair, and that the plaintiff would recover its fair share of the oil during the producing life of its leases.

The three-judge District Court overruled the defendants' motions and, upon hearing evidence offered, on August 11, 1939, entered a temporary injunction enjoining the Railroad Commission and the Attorney General from enforcing the proration order of June 19, 1939, and the schedules issued in connection therewith, and further enjoined the defendants from interfering with the plaintiff in daily producing from its wells "an amount of oil not exceeding 144% of the amount now allowed to each and all of complainant's said wells under said proration order of June 19, 1939, and the schedule issued in connection therewith for said field."

No appeal was taken from the temporary injunction entered by the court on August 11, 1939. On August 16, 1939, the Railroad Commission of Texas proceeded with its previously scheduled hearing on the application of Humble Oil & Refining Company for an increase in the allowables for the wells on its leases, and the Commission heard evidence generally with reference to the advisability of changing the proration order for the East Texas oil field. On September 11, 1939, after the completion of the hearing on said application, the Railroad Commission of Texas entered its order, dated September 11, 1939, containing the following provisions as to the proration of the allowable production from the East Texas field:

> "RULE 23. (A) Not more than 690,000 barrels of crude oil shall be produced from the East Texas Field during any day of the effective period of this order.
>
> "(B) The total daily allowable for the field shall be distributed among the producing wells in the field on the following basis:

"1. Each well capable of producing twenty (20) barrels of crude oil per day shall be allowed to produce twenty (20) barrels per day,

"2. Each well incapable of producing twenty (20) barrels per day shall be allowed to produce daily that amount of oil which it is capable of producing in a 24-hour period, not in excess of twenty (20) barrels,

"3. In addition to the twenty (20) barrels provided for in one (1) above, each well in the field which is capable of producing in excess of twenty (20) barrels daily shall be allowed to produce daily that proportion of the total daily allowable for the field remaining after deductions for one (1) and two (2) above have been made, that the product of such well's hourly potential by its bottom-hole pressure by the thickness of the saturated Woodbine sand underlying the well by the average number of acres per well in the lease bears to the sum of such products for all of the wells in the field."

On September 29, 1939, the Railroad Commission of Texas entered a new order fixing the allowable production of crude oil in the various fields in Texas, and readopted and amended the order of September 11, 1939, with reference to the East Texas oil field, as follows:

"RULE 23 of Division 3, as contained in an Order of the Commission dated October 17, 1933, pertaining to the EAST TEXAS FIELD as amended by an Order of the Commission dated September 11, 1939, is hereby readopted and amended as follows:

"WHEREAS, The Commission finds that in order to prevent waste in said field that the allowable production during the month of October, 1939, should not average more than 490,000 barrels per day over the thirty-one (31) day period, and that no more than 690,000 barrels of crude oil should be produced from the East Texas

Field in any one day during the month of October, 1939, and

"WHEREAS, The Commission finds that there exists a market demand for crude oil produced in such an amount in the East Texas Field during the month of October, 1939:

"IT IS THEREFORE ORDERED That Rule 23, of Division 3, of the Commission's Order of October 17, 1933, pertaining to the East Texas Field be and it is hereby amended to read, effective October 1, 1939, as follows:

"RULE 23. (a) Not more than 690,000 barrels of crude oil shall be produced from the East Texas Field during any day of the effective period of this Order.

"(b) The total daily allowable for the field shall be distributed among the producing wells in the field on the following basis:

"1. Each well capable of producing twenty (20) barrels of crude oil per day shall be allowed to produce twenty (20) barrels per day.

"2. Each well incapable of producing twenty (20) barrels per day shall be allowed to produce daily that amount of oil which it is capable of producing in a 24-hour period, not in excess of twenty (20) barrels.

"3. In addition to the twenty (20) barrels provided for in one (1) above, each well in the field which is capable of producing in excess of twenty (20) barrels daily shall be allowed to produce daily that proportion of the total daily allowable for the field remaining after deductions for one (1) and two (2) above have been made, that the product of such well's hourly potential by its bottom-hole pressure by the thickness of the saturated Woodbine Sand underlying the well by the average number of acres per well in the lease bears to the sum of such products for all of the wells in the field."

On October 3, 1939, the plaintiff filed a supplemental complaint whereby it asserted the invalidity of the proration orders of September 11, 1939, and September 29, 1939, quoted above, as being in violation of the equal protection and due process clauses of the 14th amendment to the Constitution of the United States, and seeking temporary and final injunctive relief to restrain the Railroad Commission of Texas and the Attorney General of Texas from the enforcement and execution of said orders. The plaintiff further asserted in said supplemental complaint that the orders of September 11, 1939, and September 29, 1939, were in violation of the preliminary injunction issued by the court on August 11, 1939. In said supplemental complaint, the plaintiff asserted that it owned approximately 14.3 per cent of the recoverable oil in the East Texas field, and that it should be allowed currently to produce substantially 14.3 per cent of the daily total field allowable, but that under the orders attacked, the plaintiff was currently permitted to produce only about 11.15 per cent of the total daily field allowable, and that it was thereby deprived of the opportunity to produce approximately 3.15 per cent of the daily allowable production for the East Texas field.

Upon the filing of the supplemental complaint, an order was entered by the Judge of the District Court convening a three-judge District Court at Houston, Texas, on October 12, 1939. Said court was convened on said date with Circuit Judge Rufus E. Foster and District Judges William H. Atwell and T. M. Kennerly sitting. The defendants filed an answer to the supplemental complaint, alleging that the orders of the Railroad Commission were valid and reasonable, and that the plaintiff under said proration orders would recover substantially the equivalent of the oil beneath its leases.

Evidence was submitted before the three-judge District Court on October 12, 1939, and the court took the case under advisement and requested briefs from both sides which were duly submitted. On November 10, 1939, the court entered its decree denying to the plaintiff a second temporary injunction.

A copy of the decree of November 10, 1939, denying a second temporary injunction, together with the court's findings of fact and conclusions of law, is attached hereto as "Exhibit 'A'."

No appeal was taken from the decree of November 10, 1939, denying a second temporary injunction.

The action came on for hearing on the prayer for a permanent injunction at Austin, Texas, on February 13, 1940, the three-judge District Court then consisting of Circuit Judge Samuel H. Sibley, and District Judges Robert J. McMillan and James V. Allred. In the meantime, the Railroad Commission of Texas had issued monthly proration orders for the East Texas oil field, continuing substantially the same method of proration as that established by the orders of September 11, 1939, and September 29, 1939. It was stipulated by the parties at the trial that it would be unnecessary for the plaintiff to amend its pleadings or to file supplemental pleadings showing the promulgation of such orders continuing substantially the same method of proration, and that any judgment entered by the court should apply to any orders continuing substantially the same method of proration as that established by the orders of September 11, 1939, and September 29, 1939.

This cause was heard jointly, under the provisions of Rule 42 (a) of the Rules of Civil Procedure, with Civil Action No. 36, entitled *F. W. Fischer*, Plaintiff, v. *Lon A. Smith, et al.*, Defendants, and Civil Action No. 46, entitled *Rowan & Nichols Oil Company*, Plaintiff, v. *Railroad Com-*

mission of Texas, et al., Defendants, since all of said actions involved common questions of law and fact.

The hearing of evidence in said actions was completed on February 16, 1940, and the court took the case under advisement until February 21, 1940, when it then announced that it would enter judgment in favor of the plaintiff, in this action, and also in favor of the plaintiff in Civil Action No. 46, entitled *Rowan & Nichols Oil Co.* v. *Railroad Commission of Texas, et al.*, permanently enjoining the said defendants in the enforcement and execution of the proration orders attacked. The court then stated, however, that it would withhold entering its decree for a period of 10 days, during which time the Railroad Commission could consider whether it would submit to said judgment or would appeal. The court announced that if the Railroad Commission decided to enter a new proration order and submit to the judgment of the court, it would be given additional time within which to hold a hearing. A copy of the opinion delivered by the court on February 21, 1940, is attached hereto and marked Exhibit "B".

On March 1, 1940, the Railroad Commission communicated to the court its intention to appeal the case. At the same time, the Railroad Commission filed a motion for a stay pending appeal, alleging that unless a stay was granted, serious and irreparable damage would be done to the whole East Texas oil field and to the oil industry in the State of Texas as a whole, and that the defendants would in effect be deprived of their right of appeal. The three-judge District Court was reconvened at Houston, Texas, on March 14, 1940, Circuit Judge Samuel H. Sibley and District Judge Robert J. McMillan being present, but District Judge James V. Allred being unable to attend. The defendants presented to the court their motion for a stay of the judgment pending appeal and the two judges then sitting announced that a

stay would be granted for a period of sixty days from the date of the judgment. Thereafter, on March 19, 1940, a final judgment was entered by the court, permanently enjoining the defendants from enforcing or executing the orders of the Railroad Commission attacked, and further providing that the injunction should be stayed for a period of sixty days from the date of the judgment.

A copy of the final judgment of March 19, 1940, is attached hereto and marked "Exhibit C". A copy of the findings of fact and conclusions of law which were filed on March 19, 1940, is attached hereto and marked "Exhibit D".

The Railroad Commission of Texas is an administrative commission acting under and pursuant to the statutes of the State of Texas, relating to the conservation of oil and gas, Revised Civil Statutes of Texas, Title 102. In this action the plaintiff sought interlocutory injunctive relief, as well as final injunctive relief, suspending and restraining the enforcement of orders of the Railroad Commission of Texas, acting under and pursuant to the statutes of the State of Texas and restraining the action of the Railroad Commission of Texas and its members and the Attorney General of Texas in the enforcement and execution of such orders.

The issues in this appeal are similar to those in the case of *Railroad Commission of Texas, et al.*, v. *Rowan & Nichols Oil Company*, petition for certiorari granted March 11, 1940, and now pending before the Supreme Court of the United States, Case No. 681.

The appeal prayed for is to the Supreme Court of the United States from the final judgment granting a permanent injunction, and is provided for by the Act of February 13, 1925, C. 299, Section 1 (28 U. S. C., Section 380).

The cases believed to sustain the jurisdiction of the Supreme Court of the United States upon this appeal are:

Stratton v. *St. Louis, Southwestern Railway Company*, 282 U. S. 10;

Oklahoma Natural Gas Company v. *Russell*, 261 U. S. 290.

Respectfully submitted,

(S.) GERALD C. MANN,
Attorney General of Texas,
(S.) JAMES P. HART,
Assistant Attorney General,
(S.) E. R. SIMMONS,
Assistant Attorney General,
(S.) EDGAR CALE,
Assistant Attorney General,
(S.) TOM D. ROWELL, JR.,
Assistant Attorney General,
Attorneys for Defendants,
Austin, Texas.

EXHIBIT "A".

DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION.

Civil Action No. 31.

HUMBLE OIL & REFINING COMPANY, *Plaintiff*,

vs

RAILROAD COMMISSION OF TEXAS *et al.*, *Defendants*.

By the COURT:

This suit was brought on July 26th, 1939, by the Humble Oil and Refining Company against the Railroad Commission of Texas, its members and the Attorney General of Texas to enjoin them from enforcing an order of June 19, fixing the amount of oil allowed to be produced by each well in the East Texas Oil Field.

A hearing was had before a statutory court of three judges, composed of Holmes, Circuit Judge, and McMillan and Kennerly, District Judges. A decree was entered on August 11, 1931, granting an interlocutory injunction as prayed for, upon plaintiff giving bond in the sum of $5,000.00.

On October 3d, 1939, plaintiff filed a supplemental complaint alleging that an additional order of the Railroad Commission issued on September 29th, 1939, was violative of the interlocutory injunction, was unreasonable, arbitrary and confiscatory and deprived complainant of its property without due process of law. Owing to the serious illness of District Judge McMillan and conflicting judicial engagements of Circuit Judge Holmes, a statutory court of three judges composed of Foster, Circuit Judge, and Atwell and Kennerly, District Judges, both of whom had been assigned to the Western District of Texas, was assembled and a hearing was had on October 12, 1939. Numerous affidavits and maps were introduced in evidence and the case was argued and submitted.

The affidavits tend to show many complicated facts pro and con as to the discretion exercised by the Commission in entering the order of September 29, 1939. It is unnecessary to consider and analyze them for the purpose of this hearing. There is no substantial difference between the parties as to the material facts, which we find as follows.

The East Texas Oil Field has 133,000 producing acres. Plaintiff has producing leases covering 14,691 acres. The oil bearing sand varies in thickness throughout the field. There are approximately 25,000 wells in the field. The order of June 19, 1939, fixed the top daily allowable at 520,000 barrels and permitted each well to produce only 2.32 per cent of its hourly potential production. However, some 19,000 wells, not capable of producing in excess of 20 barrels a day were allowed to produce 20 barrels per day or all they could to that limit, regardless of whether their allowable measured by the percentage of their hourly potential production would reach that figure. Other wells were held to the 2.32 per cent of their hourly potential. Under this order no well was allowed to produce more than 26 barrels per day.

The injunction heretofore issued enjoined the defendants from enforcing against plaintiff the order of June 19, 1939, and any other orders substantially the same; and from interfering with plaintiff in producing daily 144 per cent of the amount of oil plaintiff was allowed to produce from its wells under the order. Necessarily, this percentage was intended to be based upon an allowable of 520,000 barrels a day.

The order of September 29th provides as follows:

"Rule 23. (a) Not more than 690,000 barrels of crude oil shall be produced from the East Texas Field during any day of the effective period of this Order.

"(b) The total daily allowable for the field shall be distributed among the producing wells in the field on the following basis:

"1. Each well capable of producing twenty (20) barrels of crude oil per day shall be allowed to produce twenty (20) barrels per day.

"2. Each well incapable of producing twenty (20) barrels per day shall be allowed to produce daily that amount of oil which it is capable of producing in a 24-hour period, not in excess of twenty (20) barrels.

"3. In addition to the twenty (20) barrels provided for in one (1) above, each well in the field which is capable of producing in excess of twenty (20) barrels daily shall be allowed to produce daily that proportion of the total daily allowable for the field remaining after deductions for one (1) and two (2) above have been made, that the product of such well's hourly potential by its bottom-hole pressure by the thickness of the saturated Woodbine Sand underlying the well by the average number of acres per well in the lease bears to the sum of such products for all of the wells in the field."

Under the provisions of the order of September 29th plaintiff was allowed to produce about 11.15 per cent of 690,000 barrels, which would amount to about 148 per cent of 520,000. This would be approximately 76,960 barrels daily under the new order as against 74,880 barrels under the old order, an increase of production of about 2000 barrels daily. The daily average production from the field is materially reduced by the shutting down of the wells under orders of the Commission on certain days in each month. But the figures retain substantially the same comparative value.

Conclusions of Law.

Under the law of Texas the holder of an oil lease is the owner of the oil in place under the lease and is entitled to produce his fair share of the oil drawn from the common reservoir. The Railroad Commission has authority to prorate the amount each well shall be allowed to produce but its orders must be reasonable and fair. The findings of fact by the Commission are not conclusive and any party in interest has the right to appeal to the courts for relief. However, orders of the Commission, promulgated after a hearing, are entitled to weight prima facie. Usually, courts do not permanently set them aside unless convinced they are invalid, after a hearing on the merits. In this case the interlocutory injunction issued to prevent irreparable loss until

a hearing could be had on the merits and final decree entered. It is apparent from the above facts that the order of September 29th does not deprive plaintiff of the benefit of the interlocutory injunction heretofore issued. There is no occasion to enter another interlocutory decree at this time.

The application should, therefore, be denied.

Endorsed: No. 31 Civil Action United States District Court, Western District of Texas, Austin Division, Humble Oil and Refining Company vs. Railroad Commission of Texas, et al. Opinion of Three-Judge Court on Application for Second Interlocutory Injunction. Filed 10th day of November, 1939, Maxey Hart, Clerk, by Joe Steiner, Deputy.

DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION.

Civil Action No. 31.

HUMBLE OIL AND REFINING COMPANY, *Plaintiff*,

vs.

RAILROAD COMMISSION OF TEXAS *et al.*, *Defendants*.

For the written reasons on file it is Ordered, Adjudged and Decreed that the application for a second interlocutory injunction herein be Denied.

(Signed) RUFUS E. FOSTER,
U. S. Circuit Judge.

(Signed) WM. H. ATWELL,
U. S. District Judge.

In signing this Order, I make this comment. I do not wholly agree with the written reasons filed, but think the Second Interlocutory Injunction should be denied.

(Signed) T. M. KENNERLY,
U. S. District Judge.

EXHIBIT "B".

United States District Court, Western District of Texas, Austin Division.

No. 31 Civil, Humble Oil & Refining Co. *v.* Railroad Commission of Texas, et al.

Attorneys for Plaintiff: Rex G. Baker, E. E. Townes, R. E. Seagler, Felix A. Raymer, Carl Illig, Jr., R. E. Hardwicke, Powell, Rauhut & Gideon.

Attorneys for Defendants: Gerald C. Mann, Attorney General of Texas, James P. Hart, D. D. Mahon, E. R. Simmons, Tom D. Rowell, Jr., Edgar Cale, and Lee Shoptaw, Assistant Attorney Generals.

No. 36 Civil, F. W. Fischer *v.* Lon A. Smith, et al.

Attorneys for Plaintiff: F. W. Fischer, W. T. Saye.

Attorneys for Defendants: Gerald C. Mann, Attorney General of Texas, James P. Hart, D. D. Mahon, E. R. Simmons, Tom D. Rowell, Jr., Edgar Cale, and Lee Shoptaw, Assistant Attorney Generals.

No. 46 Civil, Rowan & Nichols Oil Co. *v.* Railroad Commission of Texas, et al.

Attorneys for Plaintiff: Dan Moody, Rice M. Tilley.

Attorneys for Defendants: Gerald C. Mann, Attorney General of Texas, James P. Hart, D. D. Mahon, E. R. Simmons, Tom D. Rowell, Jr., Edgar Cale, and Lee Shoptaw, Assistant Attorney Generals.

Tentative Conclusions of Law.

Judge Sibley: Are counsel present in the oil cases? They don't have to be.

Mr. Baker: Yes, sir, I am here for the Humble.

Mr. Cale? The Railroad Commission is represented. I don't believe Mr. Fischer has a representative here. I don't know.

Judge Sibley: He wouldn't have to be, of course. We are about, gentlemen, to announce our conclusions in a general way in these cases. The paper I am about to read is not final. It is in the nature of conclusions of law, but we reserve the right to modify or change them to meet more exactly our views, to express more exactly what we think the

law is, if it becomes necessary, but for the present purposes, I read these conclusions, disposing of the cases.

First, the court has jurisdiction in each case.

Second, in the case of F. W. Fischer, an injunction, either temporary or permanent, ought not to be granted, because no irreparable injury is shown to him by the operation of the order. It does not operate unreasonably as to him.

We find, as will appear, that the situation is otherwise as to the other litigants. We think that the present injury to each of them is clear, practically admitted, and the only reply to it is that in the future the injury under this order may be returned to them. We regard that contingency as so uncertain as to make it our duty to look principally to the present operation, and to say that they have established such an injury in its nature irreparable, and without any other remedy at law as to make it our duty to examine the order.

That part of the order which fixed the top allowable made to prevent waste, the Commission had power to make, and it is not arbitrary or unreasonable. The statute which declares that pumping wells of the depth that all wells have in the East Texas oil field and which can produce no more than twenty barrels per day in thirty consecutive days are "marginal wells", and not to be restricted by the Commission, is not patently invalid. These wells are almost wholly on the edges of the field and are approaching exhaustion. The Legislature could make of them a separate class, and in view of the expense of operating them by pumping and of their probable short life, the fixed allowable granted them is probably not arbitrarily fixed. The amount of the present top allowable to them is less than one per cent, and the effect of it on the fairway wells which are here complaining is too uncertain and insignificant to require a decision on the constitutionality of the statutory classification.

The portion of the order which prorates the remainder of the top allowable among the non-marginal leases and wells so operates that about three-fourths of it is distributed on a flat basis per well so as to give each well an initial twenty barrels per day, but with three days of shut down each week, it makes an equivalent of about 11.7 barrels per day. The remaining one-fourth is prorated by a formula

which takes account of the productive capacity or potential of each well, and the acreage, sand thickness, and bottom hole pressure of each lease, all as factors in fixing the allowable for the wells on the lease. This operates to restrict more drastically the production from the best wells and leases in the fairway, where all those of Rowan & Nichols Company are and most of those of Humble Oil Company, than that from less productive wells to the East and West, and that from more densely drilled leases in the fairway. Is this result so unreasonable as to make the order contrary to the statute or the Fourteenth Amendment?

The question under the two seems to be approximately the same. If the proration is unreasonable, the statute doesn't give the Commission authority to make it. If it is so unreasonable as to be arbitrary, the Constitution does not permit it to be done either by the Legislature or the Commission.

The Commission as to all wells at first made a straight per well proration. The Commission's orders of this sort were held unreasonable. A later order which combined well potential with a flat per well allowance so that about half of the total was distributed according to potential was upheld as reasonable. It is not now urged that no basic flat per well allowable should be made, but only that three-fourths of the whole should not reasonably be so apportioned. The reason for distributing three-fourths of the allowable on a flat basis per well, or for distributing any of it on that basis, is not precisely disclosed. As in the case of marginal wells, it seems to be thought necessary in order to keep the poorer wells, especially those having to be pumped, going at all. If they were forced out, the oil they would produce might in fact never be produced, causing waste; or shut down might be a deprivation of their owners' property contrary to the Constitution. The evidence here, however, is that even with a pumping well production can be profitably continued on five to ten barrels per day. We can think of no reason why a higher allowable per day should be fixed for non-marginal wells when to do so makes three-fourths of the distributable oil go neither according to the productive capacity of the wells nor according to the oil belonging to the several leases.

That the Legislature fixed a figure of twenty barrels for marginal wells is without great significance, for they are perishing wells. Others which are near the border line will soon enough enter that class, and need not prematurely be treated as such. The drilling density of wells is so diverse on different leases otherwise comparable that to distribute three-fourths of a top allowable on a flat basis per well without reference to the oil reserves of the lease or the productive capacity of those wells, which constitute the value of the property, is unreasonable and therefore in violation of the Constitution and the statute. It is not for us to suggest a proportion or a formula. We think the present proportion unsustainable.

We do not say that the time element, the probable life of the wells, may not be considered in an apportionment, though there is necessarily much uncertainty involved. We do not say that either presently or ultimately each lease must be allowed to produce in exact proportion either to its present or original oil in place. All of these may be given a reasonable consideration, sacrificing property interests as little as may be in the effort to achieve the public aim of conservation. Some inequalities attend all legal regulation, and must be borne, but the regulation itself must be on a fair principle and founded on good reason. Previous decisions have established a flat per well apportionment to be unreasonable, and also one which was substantially that, though some effect was given to well potential. We now hold that with the wide differences in well density and in well capacity that exists in the East Texas field, an apportionment of three-fourths on a flat per well basis is not justified by a good reason—is unreasonable.

As the conclusion from this holding, we will deny the temporary injunction to the Rowan & Nichols Company for the reason that one was denied in respect to the Humble Company, and we think it best to let matters go along on an even keel with no differences in the oil field. Permanent injunctions will be granted both to the Rowan & Nichols Company and to the Humble Company, but we do not wish to enter the injunctive decrees and upset the oil field until an opportunity has been given to decide the future of this case. For that reason, for the period necessary to

make a determination, about which we will hear you gentlemen, we desire that a decision be reached as to whether or not an appeal is to be taken, or whether the decision will be submitted to on the part of the Railroad Commission.

If it is to be submitted to, they probably would desire time to make a new order, in order to avoid upsetting the operations in the field. If it is to be appealed, we would, of course, have to enter the final decrees that they might be appealed from, but the effect of it could be controlled by orders or supersedeas of the proper sort. So that is the practical situation that we wish to handle. If there is an appeal, of course, findings of fact in which we would want the assistance of counsel would have to be prepared, and perhaps more exact or more elaborate findings of law, conclusions of law, but this states our decision of the case.

If the Commission or its representative could indicate to us what time they would like to consider the future course of matters, we would be glad, of course, to understand what that time is, and fix it. We will have to separate, but we would be glad to take care of it by mail.

Mr. Cale: May it please the court, I would like some hour or so to confer with the Railroad Commissioners on their desire in the matter. At this point I can't definitely tell the court what position they will take. I presume they will pursue the course of an appeal, bu. in the event that is not their desire in the matter, I would like to have some time to discuss it with them and report back to the court.

Judge Sibley: That is an entirely reasonable time.

Mr. Baker: I want to be sure, if the court please, that I understand. I assume that the court had in mind that the Commission would be given a reasonable time to make an order that would remedy the situation, or at least do away with this order which the court has held to be unreasonable.

Judge Sibley: If they wish to, we will consider that.

Mr. Baker: Yes, sir.

Judge Sibley: But they say for the present they want to decide whether they are going to appeal.

Mr. Cale: That is correct. I would like to have an opportunity to confer with the Commission and see what their wishes are and report back some time this afternoon or after lunch at the court's pleasure.

Mr. Baker: If the Commission should——

Judge Sibley: We don't want to rush you to an hour.

Judge Allred: We don't want to limit the conference with the Commission, as to whether you will appeal or not. You can confer with them about whether they will call a hearing and perhaps pass another order. We will give you all of the time you need.

Judge Sibley: You can have all of the time you need to keep your business straight. That is the purpose of our question.

Mr. Cale: Yes, sir. We would like to have as much time in that regard as the court will give us. We would like to cooperate with the court as much as we can.

Judge Sibley: I think a week or ten days, if you want to consider the situation and arrive at a fixed conclusion that will be reasonable and right.

Mr. Cale: I understand the order will not be entered?

Judge Sibley: There will be no order entered at all within that time.

Mr. Cale: All right, thank you, sir.

Judge Allred: And, Judge, pardon me. I think the Commission would be entitled to this indication. If the Commission decides to hold a hearing—give notice and hold a hearing, with the idea in mind to prepare another order, we would be willing to extend that time.

Judge Sibley: I think so.

Judge Allred: They have to give ten days notice under the statute, if they want to do that.

Mr. Cale: Yes, sir, that is correct.

Judge Sibley: I really had in mind to give thirty days for a purpose of that sort.

Mr. Cale: We would appreciate having that time, your Honor. I didn't know what the court's disposition would be in regard to that matter. If you could give us thirty days——

Judge Allred: I think Judge Sibley meant we would give you ten days for the Commission to decide what they wanted to do, and if they wanted further time to give notice and have a hearing, we would be willing to give you thirty days, so as to give time to give that notice, as required. That is

my understanding. That was your understanding, wasn't it, Judge?

Judge Sibley: Yes.

Mr. Cale: Thank you, sir.

Judge Sibley: We will not hold the Pullman Company lawyers in attendance. We will have to decide that case a little more at our leisure. We can't decide it instantly, and we will file a decision when we reach it.

Mr. Moody: May I ask a question? All of the questions or exceptions and matters of that kind, I suppose, will be taken care of when the order is finally entered?

Judge Sibley: You don't need any exceptions now. They are obsolete.

Mr. Moody: Well, I wasn't sure about the new practice.

Judge Sibley: Well, we will take a recess. We will take a recess until two o'clock.

(The court then, at 12:10 o'clock p. m., Wednesday, February 21, 1940, recessed until 2:00 o'clock, of the same day, at which time the following proceedings were had:)

EXHIBIT "C".

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION.

Civil Action No. 31.

HUMBLE OIL & REFINING COMPANY, *Plaintiff*,

vs.

RAILROAD COMMISSION OF TEXAS *et al.*, *Defendants.*

Final Judgment.

This action having been heard twice heretofore before statutory three-judge courts duly assembled on motions for preliminary injunctions, came on to be tried on its merits on February 13 to 16, 1940, before a statutory court of three judges, consisting Sibley, Circuit Judge, and McMillan and Allred, District Judges, and came the plaintiff, Humble Oil

& Refining Company, by its attorneys of record and announced ready for trial, and came the defendants, the Railroad Commission of Texas, Lon A. Smith, Ernest O. Thompson and G. A. Sadler, Members of said Commission, and Gerald C. Mann, Attorney General of Texas, in their official and individual capacities, by their attorneys of record and announced ready for trial, and it appearing that proper notice of this motion has been given to the Governor and Attorney General of Texas as required by law, and that the Court has jurisdiction of the parties and subject-matter involved in this action, and the Court, having heard the pleadings of the parties, the evidence and argument of counsel, and being fully advised, is of the opinion that the law and facts are with the plaintiff, and that the orders and schedules of the Railroad Commission of Texas for the East Texas field complained of in this action are unreasonable and void as to plaintiff, and deprive plaintiff of its property contrary to the statutes of the State of Texas and in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, and inflict upon plaintiff daily and currently irreparable injury for which plaintiff has no adequate remedy at law; and the Court being of the further opinion that plaintiff will hereafter daily and currently suffer irreparable injury for which it has no adequate remedy at law, all contrary to the statutes of Texas and the Fourteenth Amendment as aforesaid, if orders which are the same or substantially the same as the orders complained of are enforced against plaintiff's properties and wells in the East Texas field; and the Court having afforded to the defendant, Railroad Commission of Texas, a period of ten days in which to decide whether it would write a new and valid order and schedules for said field or would appeal this action, and having been advised by said Commission that it would appeal and that it will not write an order and schedules for said field differing in any material respects from the orders and schedules complained of; and the Court being of the opinion that a permanent injunction should issue against the defendants as set out below;

It is therefore, Ordered, Adjudged and Decreed that the Railroad Commission of Texas, Lon A. Smith, Ernest O.

Thompson and G. A. Sadler, members of said Commission, and Gerald C. Mann, Attorney General of Texas, in their official and individual capacities, their successors, representatives, agents, servants, attorneys and employes be, and they are each and all hereby permanently enjoined from enforcing or attempting to enforce against plaintiff the proration orders promulgated by the Railroad Commission of Texas on September 11 and September 29, 1939, and January 24, 1940, and the schedules issued in connection therewith, for the East Texas field, as well as any and all other proration orders, rules, regulations and schedules which have been or may be promulgated by the Railroad Commission of Texas for the East Texas field which are the same or substantially the same, or similar to, or have substantially the same effect as, said orders and schedules, or which attempt to prorate the production among properties in the East Texas field on a basis which is the same or substantially the same as the basis applied in said orders and schedules.

It is further Ordered, Adjudged and Decreed that the defendants and each of them, their successors, representatives, agents, servants, attorneys and employees, are hereby permanently enjoined from denying to plaintiff tenders to move, or from interfering in any way with the transportation and marketing of the oil produced or to be produced in accordance with this judgment, and from suing for or from attempting otherwise to claim or collect penalties or to enforce forfeitures or in any other manner to penalize the oil or plaintiff, on account of the oil produced or to be produced in accordance with this judgment.

It is further Ordered, Adjudged and Decreed that the defendants and each of them, their successors, representatives, agents, servants, attorneys and employees, are hereby permanently enjoined from suing for or from attempting otherwise to claim or collect penalties from plaintiff or to seek to enforce forfeitures against plaintiff or from attempting in any other manner to penalize plaintiff on account of oil which plaintiff may have produced under the provisions of the preliminary injunction heretofore granted on August 11, 1939, in this action.

It is further Ordered, Adjudged and Decreed that all costs in this action are taxed against the defendants, except the

costs incurred in connection with plaintiff's second motion for a preliminary injunction, which latter costs are taxed against plaintiff.

The defendants having announced that they would appeal from the judgment in this action, and the court being of the opinion that the injunction should be stayed for a reasonable length of time within which the appeal can be perfected and prosecuted, it is further Ordered, Adjudged and Decreed that the enforcement of the injunction herein granted is stayed for a period of sixty (60) days from the date hereof.

The Clerk is directed to enter this judgment.

To all of the foregoing judgment, except that portion staying the injunction as above provided, the defendants in open court duly excepted.

Done at Houston, Texas, this the 19th day of March, A. D. 1940.

SAML. H. SIBLEY,
Circuit Judge.
JAMES V. ALLRED,
District Judge.
ROBERT J. MCMILLAN,
District Judge.

Approved as to form:
REX G. BAKER.

EXHIBIT "D".

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION.

Civil Action No. 31.

HUMBLE OIL & REFINING COMPANY, *Plaintiff,*

vs.

RAILROAD COMMISSION OF TEXAS, ET AL., *Defendants.*

Findings of Fact and Conclusions of Law.

As required by Rule 52(a) of the Federal Rules of Civil Procedure, the court of three judges (consisting of Sibley,

Circuit Judge, and McMillan and Allred, District Judges) makes the following as its findings of fact and conclusions of law in the above numbered and entitled action, and the court directs that the Clerk of this Court file such findings and conclusions as part of the record in this action.

A.

Findings of Fact.

I.

Parties and Jurisdiction.

1. Plaintiff is a private corporation, duly organized and existing under the laws of the State of Texas, with its principal place of business in Harris County, Texas.

2. The Railroad Commission of Texas is domiciled in Travis County, Texas, and is the duly created and existing agency of the State of Texas, charged with the administration of the laws of the State of Texas governing the conservation of oil and gas and the production thereof. Defendants, Lon A. Smith, Ernest O. Thompson and G. A. Sadler, are the duly elected, qualified and acting members of and compose the Railroad Commission of Texas. Their official residences are in Travis County, Texas. Defendant Gerald C. Mann is the duly elected, qualified and acting Attorney General of Texas, with his official residence in Travis County, Texas. Proper notice of this action has been given to the Governor and the Attorney General of Texas, and proper service of process has been had upon all of the defendants. Furthermore, the defendants have filed their answer to the original and supplemental complaints.

3. This is a civil action. The amount in controversy exceeds $3000.00, exclusive of interest and costs. In this action, plaintiff has attacked certain orders of the Railroad Commission of Texas fixing top allowables and prorating the allowable production among properties in the East Texas Field on the ground that such orders as construed, applied and enforced against the plaintiff are without authority at law and are in contravention of the due

process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

4. The plaintiff asked for preliminary injunctions in its original and supplemental complaints, and hearings were had and judgments entered on motions for preliminary injunctions before three-judge statutory courts, and the action was subsequently tried on its merits before a three-judge statutory court. Such statutory courts were duly constituted and assembled under Section 266 of the Judicial Code, as amended.

II.

General Geologic Description of the East Texas Reservoir.

5. The East Texas Field is one huge reservoir embracing originally some 133,000 acres of land and at present including some 131,300 acres of land situated in Rusk, Gregg, Smith, Cherokee, and Upshur Counties, Texas; the field is approximately 40 miles long north and south, and averages about 4 miles wide east and west. The reservoir is in the Woodbine sand at an average depth of some 3,650 feet below the surface. In it the oil is confined by an impervious formation (Austin chalk) above, and an impervious formation (Georgetown lime) and water below. A cross section of the field extending from west to east has the shape of a vast obtuse-angled triangle with one of the short sides (westward) of the triangle resting on the water table as a base, with the other short side of the triangle (being a portion of the impervious bed of Georgetown lime) extending eastward and upward, and with the longest or top side extending from the point of contact between the oil, the water and the impervious roof on the west side of the structure, along such roof upward and eastward to the eastern extremity of the field. On the extreme west edge the oil-saturated portion of the sand is very thin, being less than a foot or so in thickness; going eastward it gradually increases in thickness to the middle of the oil-saturated portion of the reservoir, or the so-called "fairway", where the oil sand attains a maximum thickness of about 90 to 100 feet; then the oil-saturated sand gradually decreases in thickness until it is pinched out and vanishes

on the east edge of the field. The Woodbine sand extends in a westerly and upward direction from the field to an outcropping some 100 to 150 miles west and northwest of the field. Underlying approximately the west half of the oilbearing sand and extending westward and upward to the outcropping is a vast amount of salt water occupying practically all of the Woodbine sand except that occupied by oil and gas. This salt water exerts pressure against the oil and gas in the reservoir. The pressure originally was some 1,650 pounds per square inch, but as the field has been produced the pressures have been reduced, and a pressure gradient has been built up across the field from west to east ranging from an average of nearly 1200 pounds per square inch on the west to an average of about 900 pounds per square inch on the east. The pressure of the water is the principal source of reservoir energy. As wells are drilled into the producing sand, the reservoir pressures and the expansion of the gas in solution in the flowing wells, force the oil to the surface through the wells, thus affording the energy by which the field is produced. With respect to pumping wells, artificial means must be used to lift the oil to the surface. The differential in pressures from west to east tends to drive the oil, as the field is produced, from west to east.

6. Gas is dissolved in the oil and will not come out of solution until pressures are reduced to approximately 750 pounds per square inch on the average. The presence of the dissolved gas makes the oil less viscous, and materially increases its capacity to move through the pore spaces in the sand. If pressures are so reduced that gas comes out of solution, it will form bubbles in the producing sands and the oil will become more viscous, thus materially impairing the ability of the oil to flow through the sands. Gas has already come out of solution in a small area in the southeastern portion of the field.

7. Furthermore, experience has shown that the field cannot for any extended period produce at a rate materially in excess of 400,000 barrels of oil per day without causing waste, considering that an average of about 200,000 barrels of water daily are currently being produced from the field

with about 400,000 barrels of oil. If the top allowable for the field is placed too high, the reservoir pressure will drop rapidly and create conditions conducive to waste; and, considering the varying densities to which properties in the field have been drilled, there will be non-ratable withdrawals from the field, if much of the allowable be prorated on the per-well or per-well potential basis, or any basis giving too much value to wells or potentials, thus resulting in an uneven or irregular rise of the water table. This will cause large quantities of oil to be trapped off or enveloped by what is known as coring or channeling of the water, and will greatly reduce the ultimate recovery from the field, thus causing physical waste..

8. The Woodbine sand, in which the oil and gas are found in the field, is a very porous and highly permeable sand; there is intercommunication between all parts of the reservoir, thus permitting rather free movement of oil and gas from one portion of the reservoir to another. The fluids flow from areas of higher to areas of lower pressure, thus resulting not only in local migration, but also in a general movement or encroachment upward and eastward of water from the west, being a normal movement in the light of the pressure gradient across the field, high on west, lower in the east. A well drilled into the reservoir and operated under proper conditions of control of reservoir pressure will effectively drain an area of at least ten acres.

9. The number of acre-feet of net effective oil sand in the field, or in a lease in any portion of the field, can be determined actually and relatively with reasonable accuracy by taking into consideration such factors as the number of acres of land in a lease and the average thickness of the net oil sand under the lease. It is likewise possible to determine with reasonable accuracy, actually and relatively, the quantity of oil per acre-foot of net effective oil sand, and the quantity of recoverable oil in the field and in the various leases in the field assuming the conditions under which the field is to be operated.

III.

Extent and Location of Plaintiff's Properties.

10. Plaintiff owns leases covering approximately 14,656 surface acres of land within the producing limits of the field. Such leases comprise approximately 11.4% of the producing acreage within the field. Some of its leases lie in the western portion and some in the eastern portion; but most of its leases are situated along a line running in a northerly and southerly direction near the middle of the field; that is, for the most part, its leases are located in the so-called "fairway", or that portion of the field where the producing sands have the greatest thickness and largest quantity of recoverable oil in place.

IV.

The Oil Reserves in the Field and Under Plaintiff's Leases.

11. Plaintiff's leases originally contained approximately 14.3% of the acre-feet of net oil sand in the field. The average thickness of the net oil sand under plaintiff's leases was 48.29 feet, while the average thickness of the net oil sand under the field as a whole was 37.78 feet.

12. Competent petroleum engineers and geologists will agree fairly well concerning the amount of oil per acre-foot of net oil sand in place in the East Texas Field. The percentage of the oil which can be recovered per acre-foot depends upon the manner in which the individual wells and the field as a whole are operated. If a proper allowable for the field and ratable production are maintained, a higher rate of recovery per acre-foot may reasonably be expected than if the allowable for the field is excessive, or if excessive localized withdrawals are permitted. The opinions of competent engineers and geologists may vary as to what the actual rates of recovery per acre-foot in the field will be in the future, due in part to their differences in assumptions as to the conditions under which the field may hereafter be operated. Such possible variances in recovery figures would not materially change the percentage of the total volume of recoverable oil in the field which lies under

plaintiff's leases. Whether the rate of recovery per acre-foot in the field be high, medium, or low, plaintiff's percentage of the oil actually recovered (by itself or others) should not vary materially, due to the relation which exists between the number of acre-feet of oil sand under its leases compared with the number of acre-feet of oil sand in the field as a whole.

13. Up to June 1, 1939, the field had produced approximately 1,365,000,000 barrels of oil. Of this amount, plaintiff's leases produced approximately 131,000,000 barrels, or only about 9.6% of that portion of the original reserves which had been depleted up to that time. Plaintiff has been permitted in the past to recover only 11/15 as much oil per acre-foot of its oil sand depleted as the field as a whole has been permitted to produce per acre-foot of sand depleted.

14. At the present time the amount of net oil sand under plaintiff's leases is at least 14.3% of the total net oil sand now in the field; and it now has under its leases at least 14.3% of the total remaining recoverable reserve of oil in the field.

V.

Comparative Drilling Densities in the East Texas Field.

15. The East Texas field has been drilled to an average density of one well to approximately 5.17 acres. Plaintiff's properties have been drilled to an average density of one well to about 5.8 acres. Properties in the field other than plaintiff's properties have been drilled to a density of one well to approximately 5.1 acres. While the Commission's rule which provides for well spacing, known as Rule 37, has been changed from time to time, more than 65% of the wells completed in the field have been drilled under permits granted by the Commission in exception to the rule. Since early in 1933, a 10-acre spacing rule has been in force. There is no uniformity of spacing in the field. Many areas in the field have been very densely drilled; for example, on 109 acres, some 360 wells have been drilled to a density of 0.1 and 0.4 of an acre, or an average density

of .3 of an acre per well. On 374 acres in the field, some 523 wells have been drilled to a density between .5 to .99 of an acre, or to an average density of .71 of an acre per well. On 2013 acres some 1336 wells have been drilled to a density of between 1 and 1.9 of an acre, or an average density of 1.5 acres per well. On 5637 acres some 2237 wells have been drilled to a density between 2 and 2.9 of an acre, or an average density of 2.5 acres per well. On 30,160 acres some 7331 wells have been drilled to a density between 3 and 4.9 of an acre, or to an average density of 4.1 acres per well. On 57,483 acres some 9879 wells have been drilled to a density between 5 and 6.9 of an acre, or to an average density of 5.85 acres per well. On 37,159 acres some 4128 wells have been drilled to a density of 7 acres or more per well, or an average density of 9 acres per well.

VI.

The Allowable Schedules and the Basis of Allocation Under Order of June 19, 1939.

16. The defendant Railroad Commission's statewide order of June 19, 1939, which became effective at 7:00 A. M., July 1, 1939, provided for an allocation of production on the basis of 2.32% of the hourly potential capacity of the several wells in the field as determined by the Commission. Such hourly potentials were determined by taking potential tests on some seventy key wells. Using these wells as control points, contour lines of equal potential were drawn. Wells other than key wells, falling between the contour lines, were then assigned potentials based on their relative positions with respect to the contour lines, whatever their actual potentials in realty may have been. Such a method of calculating or determining potentials necessarily involves the assumption, or finding, that relatively uniform conditions exist over wide areas adjacent to each key well. In connection with the proration order of June 19, 1939, the Commission issued its allowable schedule under which it fixed the daily allowable production for the various wells in the field, and issued a shutdown order, shutting down the entire field on certain specified days. These orders became effective July 1, 1939, and under their terms were to

continue in effect until 7:00 A. M., October 1, 1939. From an examination of the schedules, it appears that the above proration order as construed, applied and administered by the Commission, allocated production among the various wells in the field, on the days on which the wells were permitted to produce, on substantially the following basis:

(a) The field allowable was approximately 521,500 barrels per day.

(b) Wells incapable of making 20 barrels per day, which were classed as marginal wells, were permitted to produce all of the oil they were capable of producing. There were some 559 wells so classified, and they produced approximately 6400 barrels per day.

(c) Wells capable of producing 20 barrels per day, or more, and to which the Commission assigned hourly potentials of less than 865 barrels, were permitted to produce exactly 20 barrels per day. There were some 18,951 such wells to which were allocated approximately 379,000 barrels per day.

(d) Wells which were assigned an hourly potential of 865 barrels, or more, were permitted to produce 2.32% of the assigned hourly potential. There were some 6300 such wells to which were allocated approximately 135,900 barrels per day.

To each non-marginal well was allocated 20 barrels per day. Only between 7000 and 10,000 barrels per day were prorated among the 6300 wells having more than 865 barrels hourly potential. The actual range of allowable was from 20 barrels to slightly less than 26 barrels per day. In substantial effect the order was a per-well order. Under said order and schedules, plaintiff was permitted currently to produce 9.932% of the field allowable. Had plaintiff's allowable been based on comparative reserves, it would have been 44% higher than it was.

Such allocation gave no separate consideration to acreage, sand thickness, bottom hole pressure, position on structure, the number of acre-feet of oil sand in a lease, or the recoverable reserves under a lease.

17. After a hearing before a statutory three-judge court on plaintiff's motion for preliminary injunction, the court found the order and schedules of June 19, 1939, unreasonable, confiscatory and void as to plaintiff, and on August 12, 1939, granted plaintiff a preliminary injunction, restraining defendants from enforcing said order and schedules against the plaintiff pending final disposition of this action on its merits, and permitting plaintiff to produce 144% of the schedules allowable for each of its wells in the East Texas field. Plaintiff duly executed and filed the required bond which was approved by the court. Plaintiff produced oil for a few days under the terms of the preliminary injunction. It was stipulated on the trial of this action on its merits that the defendants would never seek to enforce against plaintiff any fines, penalties or forfeitures, or to take any other action against plaintiff because of its having produced oil from its wells in the East Texas field to the extent that it was permitted to produce under the terms of the preliminary injunction.

VII.

Allowable Schedules and Basis of Allocation Under Orders of September 11 and September 29, 1939 and January 24, 1940.

18. The Commission's proration orders for the East Texas field of September 11 and September 29, 1939 and January 24, 1940, and the schedules issued in connection therewith, are all substantially the same. Accompanying them were shut down orders, the shut down order of January 24, 1940, closing all wells in the East Texas field, except wells classed as marginal wells, for twelve days during the month of February, 1940.

19. The salient provisions of such proration orders and schedules are:

(a) They fixed a top allowable of approximately 691,000 barrels daily for the field.

(b) They allotted 20 barrels per day to each well capable of making that many barrels, or more. There were some

25,456 wells of this kind to which were allotted approximately 509,000 barrels per day under this particular clause of the order.

(c) To wells incapable of making 20 barrels per day they allotted what they could make. These wells were classed as marginal wells. There were some 514 such wells to which were allotted some 6245 barrels per day.

(d) the balance of the field allowable, amounting to about 176,000 barrels per day, was allocated among wells capable of making more than 20 barrels per day. Each such well received in addition to 20 barrels per day, an amount determined by multiplying the proratable oil, approximately 176,000 barrels per day, by a fraction whose numerator was the product of the well's hourly potential by its bottom hole pressure by the thickness of the saturated Woodbine sand underlying the well by the average number of acres per well in the lease, and whose denominator was the sum of such products for all of the wells in the field.

Thus, less than 1% of the field allowable was allocated to so-called marginal wells. About three-fourths of the field allowable was allocated among wells on a flat per-well basis of 20 barrels per day, and about one-fourth of the field allowable was allocated among those wells capable of making more than 20 barrels per day by use of the formula described in (d) above. All wells classed as non-marginal wells were permitted to produce only 17 days during February, 1940. The average actual daily allowable for the field and for the individual wells was reduced accordingly.

VIII.

Losses Sustained By Plaintiff Under Existing Order and Schedules.

20. Following is a comparison of plaintiff's allowables under the order of June 19, 1939, and the order of January 24, 1940:

Field.	Plaintiff	Percent.
522,000 b/d	52,000 b/d	9.932%
691,000 b/d	77,000 b/d	11.17 %

Plaintiff's increase due to increase in the top allowable for the field was 16,600 b/d, or 66% of its total increase. Plaintiff's increase due to distribution under the formula in February order was 8,400 b/d, or only 34% of its total increase, or about 9% of its allowable.

21. While plaintiff owns at least 14.3% of the remaining recoverable oil reserves in the field, as stated above, its current scheduled allowable is only 11.17% of the current scheduled allowable for the field. Considering shut-downs, its current actual allowable is 11.11% of the current actual allowable for the field. On the basis of comparative reserves, and considering the position of plaintiff's properties on structure, because of which some will produce less and some more than the reserves under them at the present time, plaintiff is nevertheless currently deprived of an opportunity to produce 3.13% of the field scheduled allowable or 3.19% of the field's actual allowable. This amounts to a restriction of about 29% on plaintiff's current allowable.

22. (a) As stated above, the flat allowable of 20 barrels per well per day consumes approximately ¾ths of the field allowable, and only about ¼th of the field allowable is apportioned among wells under the formula mentioned in Paragraph 19 (d). The poorer wells and properties, as well as the better wells and properties, share in this apportionment; that is the poorer wells and properties are permitted to receive an allowable over and above the flat 20 barrel minimum. The discriminations complained of result almost entirely from the use of the 20 barrel minimum. No good reason is shown why a minimum per-well allowable of 20 barrels per day, is necessary. If the entire field allowable were apportioned in accordance with the factors mentioned in Paragraph 19(d) with no per-well minimum, plaintiff's properties would be permitted currently to produce slightly in excess of 14.3% of the current field allowable. It appears that, without using the per-well minimum, the factors employed can be given such values in a formula that a reasonable method of distribution can be effected.

(b) As a consequence of the method of allocation used, densely drilled leases in any part of the field receive much

more allowable in proportion to reserves than neighboring leases less densely drilled; and leases in the eastern and western portions of the field, where the oil sand is relatively thin, are allotted much higher allowables in proportion to their reserves than are leases in the fairway where the oil sands are thickest and the reserves greatest. The so-called fairway properties, except those which are very densely drilled, are being and will be severely drained by the leases lying in the eastern part of the field. Under the existing order, or orders similar thereto, the less densely drilled areas and particularly leases in the fairway, are not afforded an opportunity currently to recover their fair share of the oil, and probably will not ultimately be afforded an opportunity to recover substantially the equivalent of the recoverable reserves under them; while the densely drilled leases and leases particularly in the eastern portion of the field are currently afforded an opportunity to recover far in excess of their fair share, and ultimately will probably be afforded an opportunity to produce far in excess of the equivalent of the reserves underneath them.

(c) Under open flow conditions, properties in the fairway would have a distinct advantage over properties on the west side and properties on the east side of the field in enjoying recoveries in comparison with reserves. This is because, under open flow conditions, water would rapidly encroach and flood the oil sands on the west, and pressures would rapidly decline in the eastern portion of the field, while in the fairway water encroachment and pressure decline would be delayed. No sufficient explanation has been given as to why it is necessary, under conditions of control, to restrict fairway properties and wells and to favor west side and particularly east side properties and wells in such manner as to bring about the result complained of by plaintiff.

23. Under the orders and schedules complained of by plaintiff, assuming that the wells on tracts adjacent to each other have identical potentials, pressures, sand thickness and reserves, a 5-acre lease with five wells on it on the west side of the field would be permitted to produce about 5 times as much oil per day as an adjoining 5-acre lease

with only 1 well on it; a 5-acre lease in the fairway with 5 wells on it would be permitted to produce about 3 times as much oil per day as an adjoining 5-acre lease with 1 well on it; a 5-acre lease on the east side of the field with 5 wells on it would be permitted to produce about 5 times as much oil per day as an adjoining 5-acre lease with 1 well on it. This is representative of what actually takes place. Moreover, most leases on the west side and practically all, if not all of the leases on the east side of the field are permitted to produce several times as much oil per day in comparison with reserves as are leases in the fairway, excepting those fairway leases which are very densely drilled.

In general, this results in severe drainage from leases in the fairway to leases in other parts of the field, or, to put it another way, the result is that, in general, leases in the fairway are not permitted to obtain current, and may not obtain ultimate, recoveries on a basis comparable to recoveries permitted to lease in other parts of the field. Plaintiff's leases, for the most part, are located in the fairway, and this accounts in a large measure for the severe drainage that its leases are currently suffering under the existing orders and schedules, and will probably ultimately suffer if such orders and schedules are maintained in force.

24. The arbitrary allocation of about three-fourths of the field allowable on a flat per well basis of 20 barrels bears no relation to the prevention of physical waste, and is not justified by the necessities of the case.

IX.

Plaintiff Has Enough Wells.

25. Plaintiff having drilled its leases to an average density of approximately one well to 5.8 acres, already has more than enough wells to recover efficiently and effectively, without waste, the recoverable oil in its leases, and to produce its proper share of the allowable production. One well will effectively drain more than 10 acres on each of plaintiff's leases, and already it has drilled each of its leases to a density of less than 10 acres. The main factor working for prevention of waste in the East Texas field is the main-

tenance of a top allowable not materially exceeding the present figure with respect to total liquids produced. The per-well method of distribution tends to cause waste as a result of concentrated withdrawals where drilling is dense.

X.

Drilling and Production Costs in the East Texas Field.

26. It costs about $10,000.00 to drill and equip an oil well in the East Texas field. It costs about $2500.00 to equip a well with pumping equipment. Most pumping wells in the East Texas field can be operated at a profit on a daily production of as little as 5 barrels each. Many pumping wells in the field have been operated over a period of years on an average production of less than 5 barrels per day. A few pumping wells, if producing large quantities of water, may not be able to operate at a profit if producing no more than 5 barrels of oil per day; but if such wells were closed in, practically all, if not all, of the recoverable oil in the tracts on which such wells are located could be produced by other wells, and no substantial waste would result from the abandonment of such wells. Flowing wells in the East Texas field can be operated at a profit on less than 5 barrels per day average production.

27. Practically all wells in the field have been drilled more than two years, and have produced more than a sufficient amount of oil to pay for the cost of drilling, equipping and operating such wells. Some of the wells drilled within two years from this date have doubtless paid out, while many of the wells drilled less than two years ago have in a large measure paid out.

XI.

Efforts of the Plaintiff to Obtain Relief From the Commission.

28. Plaintiff has repeatedly and diligently endeavored to obtain administrative relief from the Railroad Commission of Texas, and to secure an adjustment of the allowable for its wells in the East Texas field in such manner as to

afford it an opportunity currently and ultimately to produce its fair share of the oil from the field. In spite of such efforts the defendant Commission has failed and refused to grant to plaintiff the relief sought.

XII.

Confiscation and Irreparable Injury.

29. The program of regulation outlined above results in the taking of plaintiffs's property and giving it to others, without any compensation and without any reasonable necessity. Plaintiff is deprived of a reasonable opportunity to produce currently a very substantial quantity of oil which it would be entitled to produce under a proper method of regulation. The loss to plaintiff under such a program amounts to a very large figure daily, and will probably amount to an enormous figure over a period of years if the program be continued. Even if plaintiff should be authorized to drill additional wells in an effort to increase its percentage of allowable production, and even if plaintiff should elect to drill such wells, it is mere speculation to say that its allowable would be materially increased, for it is reasonably certain that other operators would likewise be given permits to drill, and the result would be nothing more than further useless expenditure for wells, with little or no relative change in the distribution of the allowable as far as plaintiff is concerned. Since plaintiff already has enough wells to produce efficiently its allowable, should it be required to drill additional wells as a prerequisite to obtaining its proper allowable, confiscation would result to the extent of the unnecessary expenditure. There is nothing in the orders or program of the Commission which even suggests that the losses already incurred by plaintiff, and to be incurred by the present program, can or will be offset by increasing the allowable of the plaintiff in the future in order to make up for any losses which have occurred or may hereafter occur.

30. The regulation by the Commission does not allocate or distribute the allowable production for the field on a reasonable basis, and is arbitrary, discriminatory, con-

fiscatory, and unreasonable as applied to plaintiff. It denies to plaintiff a reasonable opportunity to recover its fair share of the oil ultimately, much less within a reasonable time, resulting in a daily loss of many thousand barrels of oil worth many thousand dollars.

B.

Conclusions of Law.

In view of the facts found above, concerning which there really is little or no dispute in the evidence, the following conclusions of law are applicable;

1. This court has jurisdiction of the persons and subject matter involved in this action.

2. Subject to the interests of its royalty holders, plaintiff is the owner of the oil and gas in place under its leases in the East Texas field.

3. As the owner of its several leases in the East Texas field, the plaintiff is legally entitled currently and ultimately to produce its fair share of the oil produced from the field.

4. Under the statutes of Texas, Articles 6023, 6029 and Section 7 of Article 6049-c, Vernon's Annotated Revised Civil Statute, the Railroad Commission is the administrative agency charged with the duty of preventing waste; and in administering the conservation statutes is required to apportion or allocate production of oil among properties in each field "on a reasonable basis."

5. The order of the Commission of June 19, 1939, for the East Texas field, and the schedules issued in connection therewith, as interpreted, applied and enforced against plaintiff were unreasonable and void as to plaintiff. They did not afford to plaintiff an opportunity to recover its fair share of the oil. As to plaintiff they did not allocate the production in the field on a reasonable basis as required by the Texas Statutes; and they deprived plaintiff of its property without due process of law and denied to it the equal protection of the laws contrary to the Fourteenth Amendment to the Constitution of the United States.

6. The orders of the Commission of September 11 and September 29, 1939, and January 24, 1940, and the schedules issued in connection therewith for the East Texas field, as interpreted, applied and enforced against plaintiff (such orders and schedules being often referred to herein as the Commission's program of regulation for the field) are unreasonable, discriminatory, confiscatory and void as to plaintiff. As to plaintiff, they do not allocate the production in the field on a reasonable basis, as required by the statutes of Texas referred to in the preceding paragraph.

7. The program of regulation complained of by plaintiff does not within reasonable limits protect the property rights or privileges of plaintiff; it does not give to plaintiff the opportunity to produce currently its fair share, or prevent reasonably avoidable drainage of its properties considered as a whole, although plaintiff has more than enough wells already drilled on its properties from which its fair share can be produced without waste. To require plaintiff to drill any further or additional wells upon its properties would be to require plaintiff to make unnecessary and wasteful expenditures of money and, in itself, would be a confiscation of plaintiff's property.

8. Such program of regulation operates to confiscate plaintiff's property, and unreasonably discriminates against plaintiff, contrary to the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States; and such program of regulation is void as far as plaintiff is concerned. It is not necessary to prescribe and enforce such a program of regulation against plaintiff in the East Texas field in order to prevent physical waste of oil and gas, or for any other reason.

9. Plaintiff is currently suffering immediate and irreparable injury under such program of regulation, and, so long as such program is maintained in force and effect, will continue to suffer irreparable injury, unless the defendants are enjoined from enforcing such a program of regulation against plaintiff in the East Texas field. Plaintiff is without an adequate remedy at law to protect itself against losses which have occurred and which will continue to occur

under the program of regulation now in vogue. Furthermore, the Texas Statutes (Acts of 1935, 44th Leg., Reg. Sess. p. 180, C. 76, Sec. 14; Sec. 8 of Article 6049c of Vernon's Annotated Revised Civil Statutes of Texas) apparently recognized that no adequate remedy at law exists in such an instance, for the statutes specifically authorize a suit for injunction against the Commission and the members thereof in a court of competent jurisdiction in Travis County, Texas, by any interested person affected, for the purpose of testing the validity of any statute, rule, regulation or order relating to the conservation of oil and gas. This court is a court of competent jurisdiction in Travis County, Texas.

10. The marginal well statute (Acts of 1931, 42nd. Leg., Reg. Sess., p. 92, C. 58; Article 6049b of Vernon's Annotated Revised Civil Statutes of Texas) is not patently invalid. Since it appears that less than 1% of the total daily allowable production from the field is allotted to marginal wells as defined by the Commission, the court finds it unnecessary to pass upon the validity of said marginal well law. There is nothing, however, in the marginal well law which requires the Commission to use the method of distribution and program of regulation now in vogue, or which prohibits the Commission from limiting non-marginal wells below the minimum allowable applicable to true marginal wells as defined by the statute.

11. The Texas statute, cited in Section 9 of these Conclusions of Law, provides that any interested person who is dissatisfied with the effect upon him of any statute, rule, regulation or order relating to the conservation of oil or gas may institute suit for injunction to test the validity of such statute, rule, regulation or order. The statute does not require that the complaining party first seek relief from the Commission, with respect to its acts which are claimed to be invalid, as a prerequisite to the seeking of an injunction. Furthermore, if the statute be properly interpreted to mean that relief should first be sought from the Commission, and even conceding that, as a general rule, relief from a court should not be sought if the same relief could promptly be obtained by application to the administrative

agency (Commission in this instance), then it appears that plaintiff, an interested person, has already sought such relief from the Commission and has fully exhausted its administrative remedy without obtaining relief.

12. The record shows virtually no dispute as to the facts. The law being clear as applied to such facts, the court finds that an injunction should issue, substantially as prayed for by plaintiff enjoining defendants from enforcing, or attempting to enforce, the orders and schedules complained of against plaintiff or its properties in the East Texas field, or from suing for or otherwise attempting to claim or collect penalties, or to enforce forfeiture, or in any other manner to penalize plaintiff or the oil produced as set forth in the final judgment to be entered in this action as directed by the court.

The final judgment is directed accordingly.

Done as of March 19th, 1940.

SAML. H. SIBLEY,
Circuit Judge.
JAMES V. ALLRED,
District Judge.
ROBERT J. MCMILLAN,
District Judge.

Endorsed: Civil Action No. 31 in the District Court of the United States for the Western District of Texas. Austin Division Humble Oil & Refining Company, Plaintiff vs. Railroad Commission of Texas, Lon A. Smith, E. O. Thompson and G. A. Sadler, and Gerald C. Mann, Attorney General of Texas, In Their Official and Individual Capacities, Defendants Statement As To Jurisdiction As Required By Supreme Court Rule 12 Original. Filed 1st day of April, 1940. Maxey Hart, Clerk, By Joe Steiner, Deputy.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1940

NO. 57

RAILROAD COMMISSION OF TEXAS, ET AL.,
Appellants

v.

HUMBLE OIL & REFINING COMPANY,
Appellee

BRIEF FOR APPELLANTS

On Appeal from the United States District Court
for the Western District of Texas

FIRM FOUNDATION PUBLISHING HOUSE - AUSTIN

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I. There being no diversity of citizenship, the only question open to the District Court was the asserted conflict of the Railroad Commission's orders with the Fourteenth Amendment to the United States Constitution, and in considering such question, the District Court had no right to substitute its judgment for that of the Railroad Commission, even if there were convincing proof that a different result would have been better	28-31

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II. This case is controlled by the decision of this court in the case of *Railroad Commission of Texas, et al.* v. *Rowan & Nichols Oil Co.*, decided June 3, 1940 31-36

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NO. 57

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1940

RAILROAD COMMISSION OF TEXAS, ET AL.,
Appellants

v.

HUMBLE OIL & REFINING COMPANY,
Appellee

BRIEF FOR APPELLANTS

OPINION BELOW

The opinion of the United States District Court for the Western District of Texas is not reported. An informal oral opinion was rendered on February 21, 1940, (R. 564) and findings of fact and conclusions of law were entered on March 20, 1940. (R. 573)

STATEMENT OF GROUNDS FOR JURISDICTION

The jurisdiction of the Supreme Court of the United States is invoked under Sections 238 and 266 of the Judicial Code, as amended by the act of February 13, 1925. (U. S. Code, Title 28, Sections 345 and 380.) The judgment here appealed from was dated March 19, 1940, and was filed on March 20, 1940. (R. 570) The appeal was allowed in this case by an order of the District Court entered on April 1, 1940. (R. 602) The record was filed in this court on April 19, 1940, and the order noting probable jurisdiction was entered on June 3, 1940.

STATEMENT OF THE CASE

1. Proceedings in the District Court

This suit was brought by the appellee, Humble Oil & Refining Company, a Texas corporation, (hereinafter referred to as Humble) against the appellants, the Railroad Commission of Texas and its members, and the Attorney General of Texas, seeking temporary and permanent injunctive relief against the enforcement of the proration orders of the Railroad Commission of Texas relating to the East Texas field, on the ground that the orders, as enforced and applied against the property of the appellee, deprived it of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States. All parties are citizens of the State of Texas, and the

jurisdiction of the District Court rested solely on the appellee's claim of the invalidity of the orders of the Railroad Commission under the United States Constitution. (R. 2)

In its complaint filed in the District Court on July 26, 1939, (R. 1) appellee attacked the validity under the Texas statutes and the United States Constitution of the proration order of the Railroad Commission of Texas, dated June 19, 1939. This order is in substance the same as the proration order heretofore considered by this court in the case of *Railroad Commission of Texas* v. *Rowan & Nichols Oil Company*, No. 681, October Term, 1939, decided June 3, 1940. (60 S. Ct. 1021, 84 L. Ed. 983) The pertinent portions of this order read as follows: (R. 9)

> "Rule 23. (2) Therefore, It is Further Ordered by the Railroad Commission of Texas that during each twenty-four (24) hour period beginning at 7 o'clock a.m., Central Standard Time, July 1, 1939, the owner or operator or manager of each well in the East Texas Field shall be permitted, either collectively or individually, to produce daily from each well a maximum of Two and Thirty-two Hundredths Per Cent (2.32%) of its hourly potential capacity as determined by the Commission. Provided, however, that the above order shall not be enforced as to the property of Rowan & Nichols Oil Company, involved in Cause No. 624 in Equity in the United States District Court for the Western District of Texas, Austin Division, in so far as the enforcement of this order is prohibited by the injunction issued by said Court

on June 14, 1939, and so long as said injunction is in force and effect."

The contention of the appellee in its complaint was that the proration order attacked was principally a per well order, since the Railroad Commission did not apply the formula set forth in the order of June 19, 1939, to any well where the application of said formula would reduce the daily allowable of such well below 20 barrels a day, and permitted every well, which was capable of producing that amount, to produce at least 20 barrels per day. (R. 10) Appellee alleged that it was the owner of not less than 14% of the oil in the field, and that it should currently be allowed to produce daily an amount of oil substantially equal to 14% of the total daily field allowable, but that the Railroad Commission, under the order of June 19, 1939, permitted the appellee to produce currently only approximately 9.932% of the daily field allowable, and thereby deprived the plaintiff of an amount of oil equal to about 4% of the total daily field allowable. (R. 11)

A three-judge district court was convened on August 10, 1939, to hear the plaintiff's application for a temporary injunction. The defendants filed a motion for a more definite statement and for a bill of particulars, and raised the defense that the action was premature, in that the plaintiff had not exhausted its administrative remedy since it had applied to the Railroad Commission for an increase in its allowable, and the Railroad Commission then had pending before it and set for hearing on August 16,

1939, the plaintiff's application for an increase in its allowable. The defendants also filed their answer, alleging that the proration order complained of was reasonable and fair, and that the plaintiff would receive its fair share of the oil during the life of its leases.

The three-judge district court overruled the defendants' motions, and on August 11, 1939, entered a preliminary injunction, enjoining the Railroad Commission and the Attorney General of Texas from enforcing the proration order of June 19, 1939, and the schedules issued in connection therewith, and further enjoined the defendants from interfering with the plaintiff in daily producing from its wells "an amount of oil not exceeding 144% of the amount now allowed to each and all of complainant's said wells under said proration order of June 19, 1939, and the schedule issued in connection therewith for said field." (R. 38, 40)

No appeal was taken from the temporary injunction entered by the court on August 11, 1939. On August 16, 1939, the Railroad Commission of Texas proceeded with its previously scheduled hearing on the application of Humble Oil & Refining Company for an increase in the allowables for the wells on its leases and heard evidence generally with reference to the advisability of changing the proration order for the East Texas oil field. On September 11, 1939, after the completion of the hearing on said application, the Railroad Commission of Texas entered its order, dated September 11, 1939, containing the fol-

lowing provisions as to the proration of the allowable production from the East Texas field: (R. 43, Plaintiff's Exhibit No. 8, offered R. 138, copied R. 473)

"Rule 23. (A) Not more than 690,000 barrels of crude oil shall be produced from the East Texas Field during any day of the effective period of this order.

"(B) The total daily allowable for the field shall be distributed among the producing wells in the field on the following basis:

"1. Each well capable of producing twenty (20) barrels of crude oil per day shall be allowed to produce twenty (20) barrels per day.

"2. Each well incapable of producing twenty (20) barrels per day shall be allowed to produce daily that amount of oil which it is capable of producing in a 24-hour period, not in excess of twenty (20) barrels.

"3. In addition to the twenty (20) barrels provided for in one (1) above, each well in the field which is capable of producing in excess of twenty (20) barrels daily shall be allowed to produce daily that proportion of the total daily allowable for the field remaining after deductions for one (1) and two (2) above have been made, that the product of such well's hourly potential by its bottom-hole pressure by the thickness of the saturated Woodbine sand underlying the well by the average number of acres per well in the lease bears to the sum of such products for all of the wells in the field."

On September 29, 1939, the Railroad Commission of Texas entered a new order fixing the allowable production in the various fields in Texas, and readopted and amended the order of September 11, 1939, with reference to the East Texas oil field. (R. 44, Plaintiff's Exhibit No. 8-A, offered R. 138, copied R. 476)

On October 3, 1939, the appellee filed a supplemental complaint (R. 41) whereby it asserted the invalidity of the proration orders of September 11, 1939, and September 29, 1939, as being in violation of the Texas statutes and the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States, and seeking temporary and final injunctive relief to restrain the Railroad Commission of Texas and the Attorney General of Texas from the enforcement and execution of said orders. The appellee further asserted in said supplemental complaint that the orders of September 11, 1939, and September 29, 1939, were in violation of the preliminary injunction issued by the court on August 11; 1939. (R. 47) In its supplemental complaint, the appellee asserted that it owned approximately 14.3% of the recoverable oil in the East Texas field, and that it should be allowed currently to produce substantially 14.3% of the daily total field allowable, but that under the orders attacked, the appellee was currently permitted to produce only about 11.15% of the total daily field allowable, and that it was thereby deprived of the opportunity to produce approximately 3.15% of the daily

allowable production for the East Texas field. (R. 45)

A three-judge district court was convened on October 12, 1939, to hear Humble's application for a second interlocutory injunction. The defendants filed an answer to the supplemental complaint, alleging that the orders of the Railroad Commission were valid and reasonable, and that the plaintiff under said proration orders would recover substantially the equivalent of the oil beneath its leases. (R. 53) Evidence was submitted and the court took the case under advisement and on November 10, 1939, the court entered its decree denying to the plaintiff a second interlocutory injunction (R. 69), principally upon the ground that the Railroad Commission's order of September 29, 1939, gave the appellee a greater allowable than was required by the interlocutory injunction dated August 11, 1939. (R. 68)

No appeal was taken from the decree of November 10, 1939, denying a second interlocutory injunction.

The action came on for hearing on the prayer for a permanent injunction at Austin, Texas, on February 13, 1940. In the meantime, the Railroad Commission of Texas had issued monthly proration orders for the East Texas oil field, continuing substantially the same method of proration as that established by the orders of September 11, 1939, and September 29, 1939. It was stipulated by the parties at the trial that it would be unnecessary for the

plaintiff to amend its pleadings or to file supplemental pleadings showing the promulgation of such orders continuing substantially the same method of proration, and that any judgment entered by the court should apply to any orders continuing substantially the same method of proration as that established by the orders of September 11, 1939, and September 29, 1939. (R. 471)

This action was tried jointly, under the provisions of Rule 42 (a) of the Rules of Civil Procedure, with Civil Action No. 46, entitled *Rowan & Nichols Oil Company, Plaintiff* v. *Railroad Commission of Texas, et al., Defendants*, which is now on appeal in this court as No. 218, October Term, 1940, *Railroad Commission of Texas, et al., Appellants* v. *Rowan & Nichols Oil Company, Appellee.* It was agreed at the trial that evidence introduced by any party might be used for or against any other party. (R. 70, 72, 291)

The hearing of evidence was completed on February 16, 1940, and the court took the case under advisement until February 21, 1940, when it announced that it would enter judgments in favor of Humble and Rowan and Nichols Oil Company, permanently enjoining the said defendants in the enforcement and execution of the proration orders attacked. (R. 564) The court then stated, however, that it would withhold entering its decree for a period of 10 days, during which time the Railroad Commission could consider whether it would submit to

said judgment or would appeal.

On March 1, 1940, the Railroad Commission communicated to the court its intention to appeal the case. At the same time, the Railroad Commission filed a motion for a stay pending appeal, alleging that unless a stay was granted, serious and irreparable damage would be done to the whole East Texas oil field and to the oil industry in the State of Texas as a whole, and that the defendants would in effect be deprived of their right of appeal. The three-judge district court was reconvened at Houston, Texas, on March 14, 1940. The defendants presented to the court their motion for a stay of the judgment pending appeal and the court announced that a stay would be granted for a period of 60 days from the date of the judgment. Thereafter, a final judgment dated March 19, 1940, and filed March 20, 1940, was entered by the court, permanently enjoining the defendants from enforcing or executing the orders of the Railroad Commission attacked. (R. 570) This appeal is from said judgment.

2. Issues Presented

The issues involved in this appeal are basically the same as the issues involved in the case of *Railroad Commission of Texas* v. *Rowan & Nichols Oil Company*, 60 S. Ct. 1021, 84 L. Ed. 983.

The Humble in its complaint conceded the validity of the conservation statutes of Texas, the validity of

the spacing rule, known as Rule 37, and the right of the Railroad Commission to fix the total daily field allowable at the figure set. (R. 22)

No attack was made upon the procedure of the Railroad Commission in promulgating the orders attacked. While the evidence shows that the Railroad Commission held extensive hearings (R. 335, 337, 338, 461), the plaintiffs did not seek to introduce the record before the Railroad Commission, but only portions of such record were introduced. (R. 337, 461, 468-470) No claim was made that the Commission acted without notice or hearing or that it did not act upon sufficient evidence heard by it.

During the trial it was also conceded that the factors entering into the proration formula (other than the 20-barrel base allowable) were proper (R. 583) and that the allowance to the "statutory marginal" wells (which were incapable of producing in excess of 20 barrels per day) was so negligible as to have no practical effect on the result of the case. (R. 196, 225, 245, 582, 589)

No complaint is made in this case of any failure of the Railroad Commission to grant to the Humble permits to drill additional wells. (R. 460) At the hearing before the Railroad Commission on August 16, 1939, the appellee's attorney stated several times that Humble did not wish to receive permits for additional wells (R. 461, 462, 469, 470) and that as far as it was concerned the hearing on the question as to

whether permits to drill additional wells should be granted could be postponed "forever." (R. 461)

The "snag in the stream", in the language of the presiding judge (R. 269) was the allowance by the Railroad Commission of a 20-barrel base allowable to all wells capable of producing that amount daily, which resulted in the proration of the total field allowable about 75% on a per well basis and about 25% on the factors of sand thickness, potential, acreage and pressure. (R. 566, 583).

The court will recall that this is fundamentally the same objection as the one raised in the case of *Railroad Commission of Texas* v. *Rowan & Nichols Oil Company*, 60 S. Ct. 1021, 84 L. Ed. 983, the distribution in the *Rowan & Nichols* case being about 98% on the per well factor and about 2% on the well-potential factor.

3. Application of Proration Orders to the Field

The application of the proration orders of the Railroad Commission resulted in the following distribution of the total daily field allowable of about 691,000 barrels: (R. 581)

1. Wells incapable of making 20 barrels per day were allowed to produce to capacity. There were 514 such wells, which produced 6,245 barrels per day.

2. All wells capable of producing 20 barrels per day were granted a base or minimum allowable of 20 barrels. There were 25,456 such wells, the total base or minimum allowable for such wells being about 509,000 barrels per day. Thus about 75% of the field allowable was distributed on a per well basis.

3. Each well capable of producing more than 20 barrels per day was given an additional allowance. The total to be so distributed was arrived at by subtracting from the total field allowable (691,000 barrels) the sum of the production of the "statutory marginal" wells (6,245 barrels) plus the base or minimum allowable for all other wells (about 509,000 barrels), leaving a balance of proratable oil of about 176,000 barrels daily. The amount above 20 barrels per day which each well was allowed to produce was determined by multiplying 176,000 barrels by a fraction whose numerator was the product of the well's hourly potential by its bottomhole pressure by the thickness of the oil sand underlying the well by the average number of acres per well in the lease and whose denominator was the sum of such products for all of the wells in the field. (R. 582) Thus, about 25% of the field allowable was distributed on the factors of well potential, sand thickness, pressure and acreage.

Under the method of proration attacked, no well received exactly 20 barrels allowable, but each well capable of producing more than 20 barrels per day

received an additional allowable, depending on the factors stated above, the best wells receiving over 50 barrels per day and wells on leases densely drilled or having thin sands receiving only a fraction of a barrel above the base allowable of 20 barrels. (R. 198, 350) In this respect the order of September 11, 1939, contrasted with the orders in effect prior to that time, because under such prior orders, some 19,000 wells received an allowable of exactly 20 barrels per day, no more and no less, and the best wells received only about 26 barrels per day. (R. 580)

Under the proration plan attacked, shut-down days were enforced against all wells in the field, except the "statutory marginal" wells. (R. 582) The result of such shut-down days was that the average daily production of the field and of each non-marginal well was reduced. The average total daily field allowable was reduced to about 400,000 barrels per day, (R. 345) and the average minimum or base allowable was only 11.7 barrels over a 30-day period. (R. 363, 375, 403)

4. Application of Proration Orders to Humble's Property

The Humble Oil & Refining Company owns leases on about 14,691 acres in the East Texas field, comprising about 11.04% of the producing acreage. (R. 2) On its leases it has drilled about 2,547 wells. (R. 82) Its leases are in general located in or near the central portion of the field or "fairway." (R. 3,

577) Under the order of June 19, 1939, it received a total daily allowable of about 52,000 barrels per day, or about 9.932% of the daily field allowable. (R. 582) Under the order of September 11, 1939, and subsequent orders, it received a daily allowable of about 77,000 barrels, or about 11.17% of the total daily field allowable. (R. 583)

5. General Description of East Texas Field

The general description of the East Texas field is a matter about which there was very little difference of exper opinion, and such facts are, of course, the same as the facts proved in the case of *Railroad Commission of Texas, et al.* v. *Rowan & Nichols Oil Co.*, 60 S. Ct. 1021, 84 L. Ed. 983. Briefly summarized, these facts are as follows: (R. 574)

The East Texas field is a vast body of oil located in the pore spaces in the eastern extremity of the Woodbine sand formation. The field is about 40 miles in length from north to south, has an average width from east to west of about four miles, and has a surface acreage of about 133,000 acres. A cross section through the field from west to east shows the field to be roughly triangular in shape. The top or long side of the triangle, running upward from west to east, is formed by the Austin chalk formation, which is impermeable and confines the oil in the reservoir at the top. The bottom of the triangle, running approximately horizontally from the western

edge of the field to about the middle of the field, is formed by the line of contact of the water in the Woodbine sand with the oil. The third side of the triangle is the Georgetown limestone formation, which begins at the water-oil contact line at about the middle of the field, and extends upward in an easterly direction to the point where it meets the Austin chalk.

The fact that the oil reservoir is triangular in cross section means that in general the amount of oil-saturated sand under any particular lease depends on its location in the field. The thinner sections of the field are in the western and eastern edges. From each edge, going toward the center of the field, the oil sand gradually becomes thicker and reaches its maximum thickness of about 100 feet at about the center of the field.

There are other factors which determine the amount of recoverable oil beneath any lease other than the amount of sand, and for this reason the amount of recoverable oil beneath any lease is not necessarily in proportion to the average thickness of the oil saturated sand. The sand varies with respect to certain physical characteristics which affect the amount and the recoverability of the oil, such as the porosity and permeability of the sand, the size and location of impermeable streaks of volcanic ash and shale, and the amount of connate water. The percentage of oil recovered will also depend on the bottomhole pressure, which in turn depends on the loca-

tion of the lease on the structure. The high pressure is on the west side, next to the water-oil contact line, and, since the pressure is not completely transmitted across the field, a pressure gradient is set up and the lowest pressures are on the east side of the field.

Almost all of the pressure in the East Texas field is furnished by the water drive, or the pressure of the water on the oil. The pressure arises from the fact that the surface outcrops of the Woodbine sand are about 3,600 feet higher than the oil reservoir in the East Texas field, and the entire Woodbine sand (except where it contains oil or gas) is saturated with water. As the oil is withdrawn from the reservoir, the water on the western edge pushes in to take its place. As the water advances, it pushes oil ahead of it. The lowest portions of the field, being on the western side of the field, naturally will be drowned out by water first, and the higher portions of the field in the center of the field will be drowned out last. In the center and on the eastern side, where water has not yet encroached, when oil is withdrawn other oil is pushed in to take its place, provided the sand is sufficiently permeable to permit the passage of the oil. In a large section in the center and in the eastern half of the field, including 6,921 acres of the leases of Humble Oil & Refining Company (R. 95), there is still as much oil in place beneath the surface as there was when the field was discovered, although oil has been produced from such leases for about 10 years. The eastward migration of the oil, resulting in the long productive life of leases where the sands

are thickest is, therefore, an important physical factor which affects the amount of oil which will be produced from any property in the East Texas field under any method of proration.

While abandonments on the west side are taking place because of the drowning of the wells by the encroachment of water, abandonments are also taking place on the east side because of the drop in pressure, due to the fact that pressure is not transmitted across the entire field. The history of the field shows that about two-thirds of the abandonments are taking place on the west side, and about one-third of the abandonments on the east side. (R. 391) The result is that the portion of the field, known generally as the fairway, where most of the leases of Humble Oil & Refining Company are located, will produce longer than any other portion of the field.

SPECIFICATION OF ERRORS TO BE URGED

The three-judge District Court erred:

1

In holding that the proration orders of the Railroad Commission of Texas of September 11, 1939, September 29, 1939, and January 24, 1940, and the schedules issued in connection therewith for the East Texas field, as interpreted, applied and enforced against the plaintiff, are unreasonable, discriminatory, confiscatory and void as to plaintiff.

2

In holding that the orders of the Railroad Commission of September 11, 1939, September 29, 1939, and January 24, 1940, and the schedule issued in connection therewith for the East Texas field, as interpreted, applied and enforced against plaintiff, do not allocate the production in the field on a reasonable basis, as required by the statutes of the State of Texas.

3

In holding that the orders of the Railroad Commission of September 11, 1939, September 29, 1939, and January 24, 1940, and the schedules issued in connection therewith for the East Texas field, as interpreted, applied and enforced against the plaintiff, operate to confiscate plaintiff's property and unreasonably discriminate against plaintiff, contrary to the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

4

In holding that the order of the Railroad Commission of June 19, 1939, for the East Texas field, and the schedules issued in connection therewith, as interpreted, applied and enforced against the plaintiff, were unreasonable and void as to plaintiff and did not allocate the production in the field on a rea-

sonable basis as required by the Texas statutes.

5

In holding that the order of the Railroad Commission of June 19, 1939, for the East Texas field, and the schedules issued in connection therewith, as interpreted, applied and enforced against the plaintiff, deprived the plaintiff of its property without due process of law and denied to it the equal protection of the laws contrary to the Fourteenth Amendment to the Constitution of the United States.

6

In holding that the plaintiff is legally entitled to recover currently an amount of oil which is in the same proportion to the total allowable for the East Texas field as the estimated recoverable oil underneath the plaintiff's lease is to the estimated recoverable oil under the East Texas field as a whole.

7

In holding that the plaintiff is currently suffering immediate and irreparable injury from the enforcement of the orders of the Railroad Commission of September 11, 1939, September 29, 1939, and January 24, 1940.

8

In holding that the plaintiff is without an adequate

remedy at law to protect itself against alleged losses to the plaintiff under the program of regulation attacked in this action.

9

In holding that the right to apply to the Commission for permission to drill additional wells as exceptions to the spacing rules of the Railroad Commission does not constitute an adequate remedy whereby the plaintiff can protect himself against loss and increase its share in the allowable production from the East Texas field.

10

In holding that the plaintiff is entitled to injunctive relief from the court, although plaintiff wholly failed to allege or prove that it had applied to the Railroad Commission for permits to drill additional wells upon its leases, or that the Railroad Commission had refused to grant it such permits.

11

In holding that plaintiff has exhausted its administrative remedy before seeking injunctive relief from this court.

12

In permanently enjoining the defendants from enforcing or attempting to enforce the proration orders and schedules complained of against the plaintiff and its properties in the East Texas field.

13

In permanently enjoining the defendants from enforcing or attempting to enforce the proration orders promulgated by the Railroad Commission of Texas on September 11, 1939, September 29, 1939, and January 24, 1940, and the schedules issued in connection therewith for the East Texas oil field, and any other orders having substantially the same effect.

14

In finding, without sufficient evidence to support said finding, that the plaintiff has been permitted in the past to recover only 11/15th as much oil per acre foot of its oil sand depleted as the field as a whole has been permitted to produce per acre foot of sand depleted.

15

In finding, without sufficient evidence to support said finding, that the plaintiff is currently deprived of an opportunity to produce 3.13% of the field scheduled allowable or about 3.19% of the field's actual allowable.

16

In finding, without sufficient evidence to support said finding, that there is no good reason why a minimum per well allowable of 20 barrels per day is necessary in prorating the allowable production of the East Texas field.

17

In finding, without sufficient evidence to support said finding, that a reasonable method of distribution of the allowable production in the East Texas field can be made without using any per well minimum allowable.

18

In finding, without sufficient evidence to support said finding, that the properties in the "fairway" of the East Texas field, except those which are very densely drilled, are being and will be severely drained by the leases lying in the eastern part of the field.

19

In finding, without sufficient evidence to support said finding, that the proration orders attacked by the plaintiff do not afford to properties in the "fairway" of the East Texas field an opportunity currently to recover their fair share of the oil.

20

In finding, without sufficient evidence to support said finding, that under the proration orders attacked by the plaintiff the properties in the "fairway" in the East Texas field will probably not ultimately be allowed an opportunity to recover substantially the equivalent of the recoverable reserves under them.

21

In finding, without sufficient evidence to support said finding, that it is not necessary to restrict "fairway" properties and wells in order to protect the west side and east side properties from drainage.

22

In finding, without sufficient evidence to support said finding, that most pumping wells in the East Texas field can be operated at a profit on a daily production of as little as five barrels each.

23

In finding, without sufficient evidence to support such finding, that if pumping wells, producing water, should be closed in by a restriction of their daily allowable, practically all of the recoverable oil in the tract on which such wells are located would be produced by other wells and no substantial waste would result from the abandonment of such wells.

24

In finding, without sufficient evidence to support such finding, that practically all wells in the field have been drilled more than two years and have produced more than a sufficient amount of oil to pay for the cost of drilling, equipping and operating such wells.

25

In finding, without sufficient evidence to support

such finding, that the loss to the plaintiff under the present method of proration amounts to "a very large figure daily."

26

In finding, without sufficient evidence to support said finding, that the loss to the plaintiff under the present method of proration will probably amount to "an enormous figure" over a period of years if the program be continued.

27

In finding, without sufficient evidence to support said finding, that, under the operation of the present program of proration in the East Texas field, the plaintiff's share in the allowable will not increase in the future as properties on the west side of the field are depleted.

28

In finding, without sufficient evidence to support said finding, that the orders of the Railroad Commission attacked by the plaintiff result "in a daily loss of many thousand barrels of oil worth many thousand dollars" to plaintiff.

29

In finding, without sufficient evidence to support such finding, that a well drilled in the East Texas field will effectively drain an area of at least ten acres.

30

In the rendition of the final judgment in this action filed and entered March 19, 1940.

SUMMARY OF ARGUMENT

1. There being no diversity of citizenship in this case, the only question open to the District Court is the alleged conflict of the orders of the Railroad Commission with the Fourteenth Amendment. The District Court therefore erroneously held that the orders failed to prorate the allowable production "on a reasonable basis", as required by the Texas statutes. In holding the administrative orders invalid under the Fourteenth Amendment, the District Court erroneously substituted its judgment of reasonableness and fairness for the judgment of the Railroad Commission.

2. This case is controlled by the decision of this court in the case of *Railroad Commission of Texas* v. *Rowan & Nichols Oil Company*, 60 S. Ct. 1021, 84 L. Ed. 983. The Railroad Commission orders in this case are attacked on the same basis as in the *Rowan & Nichols* case. The essential ground of complaint in both cases is the allowance of a 20-barrel base or marginal allowable to all wells which are capable of making that amount. In the *Rowan & Nichols* case this resulted in the distribution of about 98% of the total field allowable on a per well basis. This court overruled the contentions of the oil company in that

case that such a method of distribution was arbitrary and confiscatory. If the Railroad Commission's orders were properly sustained where they resulted in a dsitribution of the allowable 98% on a per well basis, then *a fortiori* they must be sustained where the distribution is only 75% on a per well basis, and 25% on the basis of factors which admittedly are properly considered.

3. The Humble has no standing to complain of the method of proration involved in this case because it is recovering at the present time and it will recover in the future its fair share of the oil in the East Texas reservoir.

4. The 20-barrel base or minimum allowable is reasonably necessary to permit a fair recovery of oil by wells located in the western and eastern portions of the East Texas field and on small tracts, and to prevent the physical waste of oil which will be recovered only through such wells.

5. The method of proration advocated by the Humble and embraced by the District Court (that the allowable should be prorated on the basis of current oil reserves) would result in the confiscation of the property of many operators in the East Texas field because (a) it would make it impossible for operators in the western and eastern portions of the field to obtain the equivalent of the oil originally in place beneath their land, and (b) it would make it impossible for the owners of a small tract of land

to drill and operate wells on their land. While taking the oil from such operators, it would allow operators whose leases lie mainly in the fairway, such as Humble, to recover much more than the equivalent of the oil originally in place beneath their leases.

ARGUMENT

I

There being no diversity of citizenship, the only question open to the District Court was the asserted conflict of the Railroad Commission's orders with the Fourteenth Amendment to the United States Constitution, and in considering such question, the District Court had no right to substitute its judgment for that of the Railroad Commission, even if there were convincing proof that a different result would have been better.

In the present case, there is no diversity of citizenship, the Humble being a Texas corporation and all defendants being citizens of Texas. Such being the case, all other questions, including the validity of the orders under the Texas statutes[1], are not open

[1]The Humble attacked the orders on the ground that they violated the Texas statutes. (R. 7, 10) The District Court in its oral opinion (R. 566, 567), its judgment (R. 571) and in its conclusions of law (R. 588) found the orders to be invalid because they do not "allocate the production in the field on a reasonable basis as required by the Texas Statutes" (R. 588), as well as being in violation of the Fourteenth Amendment to the United States Constitution.

for decision by the federal courts. In this connection, this court said in the case of *Railroad Commission of Texas* v. *Rowan & Nichols Oil Company*, 60 S. Ct. 1021, 1024, 84 L. Ed. 983, 985:

> "... Certainly so far as the federal courts are concerned the evolution of these formulas belongs to the Commission and not to the judiciary. *Except where the jurisdiction rests, as it does not here, on diversity of citizenship, the only question open to a federal tribunal is whether the state action complained of has transgressed whatever restrictions the vague contours of the Due Process Clause may place upon the exercise of the state's regulatory power.*" (Our emphasis)

The District Court therefore erred in striking down the Railroad Commission orders on the ground that they failed to allocate the allowable production "on a reasonable basis," as required by Section 7 of Article 6049c, Revised Civil Statutes of Texas.[2]

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[2]Even if it were held that the federal courts might properly determine the validity of the Railroad Commission's orders under the Texas statutes, the test of their validity would not be substantially different from the test applied to determine whether they violate the Fourteenth Amendment. The two questions were treated as substantially the same by the District Court in this case. (R. 566) Under the decisions of the Supreme Court of Texas, the courts have no authority to substitute their ideas of reasonableness for those of the Railroad Commission, and where the Railroad Commission has followed established procedure, its orders will not be set aside if reasonably supported by substantial evidence. In *Gulf Land Co.* v. *Atlantic Refining Co.*, 134 Tex. 59, 74, the Supreme Court of Texas said:

> "... Stated in another way, the court does not act as an administrative body to determine whether or not it would have reached the same fact conclusion that the Commission reached, but will consider only whether the action of the Commission in its determination of the facts is reasonably supported by substantial evidence."

In considering the validity of the orders under the Fourteenth Amendment, the District Court was not entitled to substitute its ideas of fairness for those of the Railroad Commission, even if there were convincing proof that a different result would have been better. In this connection, this court said in *Railroad Commission of Texas* v. *Rowan & Nichols Oil Co.*, 60 S. Ct. 1021, 1024, 1025, 1026, 84 L. Ed. 983, 985, 986, 987:

> ". . . A controversy like this always calls for fresh reminder that courts must not substitute their notions of expediency and fairness for those which have guided the agencies to whom the formulation and execution of policy have been entrusted."
>
> "Plainly these are not issues for our arbitrament."
>
> ". . . In striking the balances that have to be struck with the complicated and subtle factors that must enter into such judgments, the Commission has observed established procedure. If the history of proration is any guide, the present order is but one more item in a continuous series of adjustments. It is not for the federal courts to supplant the Commission's judgment even in the fact of convincing proof that a different result would have been better."

In the following portions of our brief we shall attempt to show, by a summary of the evidence, that the District Court substituted its judgment of fairness and reasonableness for that of the Railroad Commission, even in the face of convincing proof

that the Railroad Commission's plan of proration is reasonable and that it achieves a fair and equitable distribution.

In this connection, we direct the court's attention to the fact that, while there was no attack on the Railroad Commission's procedure and while the evidence (R. 335, 337, 338, 461), including the orders themselves[3], shows that regular hearings were held by the Railroad Commission, the records of these hearings were not introduced, except for portions of certain hearings. (R. 337, 461, 468-470) It is submitted that *the District Court clearly had no authority to strike down the administrative orders where the plaintiffs failed to prove the records upon which the orders were based.*

II

This case is controlled by the decision of this court in the case of Railroad Commission of Texas, et al. v. Rowan & Nichols Oil Company, decided June 3, 1940.[4]

(1) *The same legal issues are presented as in the Rowan & Nichols case.*

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[3]Plaintiff's Exhibit No. 8, offered R. 138, copied R. 473; Plaintiff's Exhibit No. 8A, offered R. 138, copied R. 476; Plaintiff's Exhibit No. 10, offered R. 139, copied R. 487.

[4]60 S. Ct. 1021, 84 L. Ed. 983.

In the *Rowan & Nichols* case, as in this case, the invalidity of the proration orders was assailed under the Texas statutes as well as the United States Constitution.[5] In that case, as in this case, there was no diversity of citizenship, and federal jurisdiction rested only upon the assertion of a conflict between the Commission's orders and the United States Constitution. In this court's decision in the *Rowan & Nichols* case,[6] all questions except the asserted conflict with the Fourteenth Amendment were eliminated, and upon a consideration of that question, the Railroad Commission's action was upheld. The same legal question is here presented, and, as we shall show in the next sections of this brief, the factual situation requires the same result as in the *Rowan & Nichols* case.

(2) *The same features of the proration orders are objected to in this case as in the Rowan & Nichols case.*

By stipulation of the parties in the *Rowan & Nichols* case, as well as by the findings of the District Court[7] and the Circuit Court of Appeals,[8] it was agreed that the method of distribution under attack in that case resulted in the distribution of about 98%

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[5]See *Rowan & Nichols Oil Co.* v. *Railroad Commission*, 28 F. Supp. 131, 133.

[6]See *Railroad Commission* v. *Rowan & Nichols Oil Co.*, 60 S. Ct. 1021, 1024, 84 L. Ed. 983, 985.

[7]*Rowan & Nichols Oil Co.* v. *Railroad Commission of Texas.* 28 F. Supp. 131, 134.

[8]*Railroad Commission of Texas* v. *Rowan & Nichols Oil Co.*, 107 F. (2d) 70, 71.

of the total field allowable on the basis of a "marginal" or minimum allowance of 20 barrels. In reply to the contention that such a result "gives a constitutionally inadmissible advantage to smaller and more densely drilled tracts as against those owned by respondent," this court held that "a flat per well allowance to these producers was not an unnatural answer to the problem."[9]

In this case also the essential complaint is that the Railroad Commission allows to every well in the field, capable of producing so much oil, a base or minimum allowable of 20 barrels about 75% of the field allowable being distributed on this basis. This was the objection made in the Humble's pleadings (R. 45, 48), at the trial by the Humble's witnesses (R. 162), by the presiding judge of the trial (R. 269) and by the court in its oral opinion (R. 566, 567) and in its findings and conclusions (R. 583).

(3) *In so far as the method of proration in this case differs from the method involved in the Rowan & Nichols case, it is more favorable to Humble Oil & Refining Company than was the method of proration involved in the Rowan & Nichols case.*

Under the method of proration involved in the Railroad Commission's order of June 19, 1939, which was the same as the order involved in the *Rowan & Nichols* case, and which was continued until the order of September 11, 1939, was adopted, the Hum-

[9] See 60 S. Ct. 1021, 1025, 84 L. Ed. 983, 986.

ble was permitted to produce from its leases a total of about 9.932% of the total field allowable.[10] Beginning with the order of September 11, 1939, the Railroad Commission changed the method of proration in several material respects, and *all of the changes were in favor of the operators of leases where the sands are thick and which are not densely drilled.* (R. 198, 350) These changes were as follows: (R. 579, 581)

(a) The total daily field allowable was raised from about 520,000 barrels per day to about 690,000 barrels per day, which had the result of increasing the amount of proratable oil (above the 20-barrel per well allowable) from about 7,000 barrels to about 176,000 barrels.

(b) In prorating the oil above the 20-barrel per well allowable in the order of September 11, 1939, the Railroad Commission considered not merely the factor of the potential of the well involved, but also the factors of sand thickness, acreage and pressure. The factors of sand thickness and acreage directly benefited the leases which have the thick sands and which are not densely drilled. (R. 198, 199)

(c) Under the *Rowan & Nichols* order, there were about 19,000 wells which received a flat 20-barrel al-

[10]The District Court's conclusions of law contain a finding that the order of June 19, 1939, was invalid. (R. 588) The method of proration having been changed before the trial, however, the case was tried entirely with reference to the order of September 11, 1939, and subsequent orders, and the judgment only enjoins such later orders. (R. 570)

lowable, no more and no less. The result of this method of distribution was that no discrimination was made between wells which were capable of producing only 20 barrels per day, and wells which were capable of producing around 20,000 barrels per day, in so far as their current allowable was concerned. On the other hand, under the present order, each well gets an allowable above 20 barrels on the basis of the factors named, the poorer wells receiving only a fraction of a barrel above 20 barrels, and the best wells receiving more than 50 barrels. (R. 198, 350)

(d) As specifically applied to the property of the Humble, the order involved in the *Rowan & Nichols* case permitted a total recovery by said company of about 9.932% of the total field allowable. (R. 582) whereas, under the order attacked in this case, the Humble was permitted to recover approximately 11.17% of the total field allowable. (R. 582)

It will thus be seen that every change that was made by the Railroad Commission in its proration orders of September 11, 1939, and September 29, 1939, as compared with the well potential orders which were in effect at the time of the *Rowan & Nichols* case,[11] were in favor of the Humble and other operators similarly situated. It necessarily follows, therefore, that if the Railroad Commission of Texas acted within its proper administrative discretion in distributing the allowable 98% per well, and only 2% on the basis of potential, then it certainly acted

[11] 60 S. Ct. 1021, 84 L. Ed. 983.

properly in distributing the allowable 75% on a per well basis and 25% on the basis of factors which were admittedly valid, and which were so found by the trial court. (R. 583)

III

The Humble Oil & Refining Company has recovered and is recovering its fair share of the total field allowable and will ultimately recover from the reservoir under the Railroad Commission's plan of proration an amount of oil at least equivalent to the recoverable oil originally in place beneath its leases.

(1) *Basis of Humble's Claim of Injury*

The Humble is admittedly recovering considerably more than it would be allowed to recover on a *straight per well allocation.* Under the present order it is permitted to recover about 11.17% of the total field allowable, (R. 582) whereas, under a straight per well order it would be permitted to recover only about 9.8% of the total field allowable. Even if a minimum or "marginal" allowable were wholly eliminated from the order and the allowable were allocated purely on an *acreage basis,* the Humble would recover a somewhat smaller portion of the total field allowable than it is allowed to recover under this order, since it has only about 11.04% of the total acreage in the field. (See complaint, R. 2 and

defendants' Exhibit No. 8, offered R. 361, copied R. 546) Likewise, even if a minimum allowable were wholly eliminated, the Humble, if the entire allowable were prorated purely on the basis of *well potential*, would be allowed to recover only 11.66%, or only slightly in excess of what it is allowed to recover under the orders which are attacked in this case. (R. 549)

The only basis on which it can be complained that the Humble Oil & Refining Company is not presently recovering its fair share of the total field allowable is on the assumption that it is legally entitled to produce currently an amount of oil *in the ratio of its current oil reserves to the current oil reserves of the entire field.* It was in fact on this assumption that all of the plaintiff's pleadings were based (R. 3, 10, 11, 24, 26, 45, 51) and the case was decided by the District Court. (R. 583)[12]

It is our position that the Railroad Commission is not legally required to prorate on the basis of current reserves and that it may properly consider in framing the plan of proration the amount of oil ultimately to be recovered by each section of the field. If the Humble, considering the entire production from its leases, will obtain an amount of oil equivalent to the recoverable oil originally beneath its leases, it will have received the full measure of its legal rights. *Brown* v. *Humble Oil & Refining Co.*, 126 Tex. 296;

[12]The practical difficulties and unfairness of prorating on the basis of current reserves are discussed *infra*, p. 66.

Gulf Land Co. v. *Atlantic Refining Co.*, 134 Tex. 59. The means of accomplishing this result is a matter which lies within the proper administrative discretion of the Railroad Commission. *Railroad Commission of Texas* v. *Rowan & Nichols Oil Co.*, 60 S. Ct. 1021, 84 L. Ed. 983.

The evidence shows beyond any real dispute that the Humble is not only receiving today a reasonable share of the present allowable, but also that it has not been injured up to the present time and that it will ultimately recover an amount of oil which is substantially equivalent to the amount of recoverable oil originally beneath its leases.

(2) *Past Recovery.* Since Humble's leases were estimated to contain approximately 14.3% of the original oil reserves in the field, it was assumed by Humble witnesses that Humble was entitled to produce 14.3% of the production to date, including all production before proration became effective and all "hot oil" (oil illegally produced).[13] Humble has, however, produced about 131,364,982 barrels (R. 116) which is about 9.6% (R. 132) of the estimated total production of 1,365,000,000 barrels. (R. 115, 136, 578) By simple subtraction, it was therefore

[13]The total estimated recovery of 1,365,000,000 barrels to date of the trial (R. 115, 136) included all "hot oil" produced, although witnesses for the oil companies were not able to state how much "hot oil" was so included. (R. 115, 306) The Railroad Commission was defeated in all of its attempts to limit the production from the East Texas field prior to April, 1933; production prior to that time was practically at the will of each operator. (R. 387) The District Court, however, charged the Railroad Commission with responsibility for all production which took place even prior to or in violation of its orders. (R. 578)

concluded that Humble has "lost" 4.7% of the past production of the field, or 64,000,000 barrels. (R. 133). This calculation in fact had nothing to do with physical depletion of the Humble's leases (R. 183, 186), but the District Court erroneously assumed that it did, and concluded that Humble had been permitted to produce in the past only "11/15 as much oil per acre-foot of its oil sand depleted as the field as a whole has been permitted to produce per acre foot of sand depleted." (R. 578)

Of course, the questions as to whether the Humble has produced in proportion to its current reserves and whether it has suffered any depletion are two entirely different questions.[14] The method of proration adopted by the Railroad Commission is designed to make adjustments which allow for the long or short productive periods of various portions of the field. Even assuming that the Humble has not produced to date an amount of oil in proportion to its current reserves, still this is no proof that Humble has been injured. The question of injury can be determined solely on the basis of whether there has been actual physical depletion of the Humble leases in excess of the amount of oil which has been produced from the Humble wells.

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[14]We use the term depletion throughout this brief to mean an actual reduction in the amount of recoverable oil beneath a lease. The engineers for the oil companies had apparently a very special meaning for depletion to describe any production from a lease, regardless of whether such production was fully replaced by migratory oil pushed in by the water drive. For example, Mr. E. O. Buck made the startling assertion that "some of those leases have been depleted 200 per cent and *have still got as much oil as they ever had.*" (R. 312)

The extent of physical depletion can best be estimated by first ascertaining the decrease in the number of acre feet of oil saturated sand beneath the Humble's leases. The Humble witnesses were singularly reluctant to give any figures showing the extent of the actual physical depletion of Humble leases.[15] Insistence, however, brought out physical facts which show that although the Humble has not produced as rapidly in proportion to its reserves as some operators, its leases have not been drained except to the extent that Humble has produced oil therefrom.

The Humble, according to its own witnesses (R. 116, 137) has produced about 131, 364, 982 barrels (R. 578). At the same time, the number of acre feet of oil saturated sand beneath its leases which have been actually depleted is only 119,400 acre feet, according to one method of calculation (R. 137), or 120,026 acre feet according to another method of calculation by Humble's expert, Mr. Moore. (R. 190)[16]

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[15]Although he was confident that the Humble's proportion of the total reserves had remained constantly at 14.3% (R. 84, 102), the witness I. L. Sorenson was unable to give an estimate of the number of acre feet of sand in the whole field or under the Humble's leases. (R. 102, 103) Likewise, Mr. T. V. Moore at first could not give the Humble's estimates of the acre feet actually depleted underneath the Humble leases and the field as a whole. (R. 188) When counsel for the Railroad Commission pressed Mr. Sorenson for the physical facts as to water encroachment, etc., to try to arrive at some method for checking the accuracy of his estimates of depletion (R. 120-125), the District Court impatiently stopped the cross examination on the ground that the witness "hasn't got the figures here, and can't back his opinion up with those details, so you will have to drop it right there, as far as he is concerned." (R. 125)

[16]In this connection it is interesting to note that the Humble's engineers reduced their estimate of their depletion from about 147,000 acre feet in their reply to the Railroad Commission's questionnaire in August, 1939, to the estimate of 120,000 acre feet given at the trial. (R. 456)

Substantially, the same estimate was made by Doctor Gardescu, for the Railroad Commission, upon a careful study of all available data. (R. 451) Mr. Sorenson's figures show that the actual depletion has been only 112,493 acre feet, (R. 327)[17] but he later adopted Mr. Moore's estimate of 120,026 acre feet depleted. (R. 334)

By dividing the amount of oil produced by the number of acre-feet depleted, one can readily see that the Humble has produced at the rate of about 1,100 barrels of oil per acre foot depleted under its leases, which is at least the average recovery per acre foot, exceeding in fact the estimates by some of the witnesses as to the average recovery per acre foot in the field. T. V. Moore, a Humble witness, testified that the past recovery per acre foot for the field had been about 1,100 barrels, (R. 136, 188) that in the future it would be between 900 and 1,000 barrels, and that the average would be about 1,000 barrels (R. 189). E. O. Buck, the expert for Rowan & Nichols Oil Company, estimated the average recovery per acre foot at 927.40 barrels (R. 249). I. L. Sorenson, another Humble expert, testified that the actual recovery to date was about 1,100 barrels per acre foot (R. 333), while the average future recovery would be about 900 barrels per acre foot. (R. 330)

From these figures, all given by the oil companies'

[17]This is arrived at by subtracting from the original number of acre feet beneath Humble's leases, 707, 770 (R. 136) the number of acre feet remaining, 595, 277 (R. 327), as estimated by Mr. Sorenson.

witnesses, the conclusion was inescapable that Humble has not suffered any drainage by other operators, and that it has at least recovered an average amount of oil per acre foot of its leases actually depleted. This conclusion is further supported by the testimony of the Humble's witnesses that, although much acreage has been abandoned on both sides of the field by other operators, *the Humble leases have substantially as many productive acres now as when the field was opened* (R. 101), *and that Humble has* 6,921 *acres from which it has produced* 53,000,000 *barrels, and which acreage has still as much oil underneath it as when the field was first opened.* (R. 95, 96, 135, 171) Although the Humble has over 9% of the wells in the field, it has had to abandon only 14 wells as against 613 wells abandoned in the field, or only about 2% of the abandonments. (R. 392, 393) Although the field as a whole has been depleted between 25% and 27%, the Humble leases have been depleted only 17%.[18]

In order to try to avoid the inescapable conclusion from their own figures, the Humble experts were forced to take the position in substance that the Humble's estimates of acre feet were unreliable, being "subject to some inherent errors." (R. 191, 194)

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[18]Humble's engineers estimated that the original number of acre feet in the field was 4,961,546 (R. 80, 101, 136) and that 1,250,000 acre feet had been depleted (R. 136) or about 25%. They also estimated that originally there were 5,000,000,000 barrels of recoverable oil in the field (R. 115) of which about 1,365,000,000 barrels (R. 115, 136) or about 27% had been produced. Humble's leases were estimated to have had originally 707,770 acre feet of oil sand (R. 81, 101, 136) of which about 120,000 acre feet were depleted (R. 137, 190) or a depletion of only about 17%. The Rowan & Nichols Oil Company's expert, Mr. Buck, estimated that the whole field had been depleted 31.23% (R. 310).

To explain these "inherent errors" and the failure of the facts to coincide with the Humble's conclusions, the Humble expert speculated that there was "a substantial amount of oil" below the generally accepted original water level of 3,320 feet below sea level. (R. 192) An alternative explanation was that although Humble leases produced only 1,100 barrels per acre foot depleted, the rest of the field produced 1,499 barrels per acre foot. (R. 328) This explanation is at variance with the actual estimates of recovery by the experts who testified at the trail.[19] In other words, where the best estimates of its own experts, based on actual physical depletion, failed to support its theory, the Humble repudiated its own estimates and resorted instead to the application of the magic figure of 14.3% to estimate its past "losses." This method was also followed by the District Court in its findings in complete disregard of the physical facts. (R. 578) Both the Humble and the District Court in refusing to be guided by the actual facts relating to depletion, ignore the fact that *the Humble's whole case rests on the ability of its engineers to estimate accurately the acre feet of oil sand and the amount of oil contained therein.* Unless this is assumed, there can be no validity to the Humble's assertion that it has 14.3% of the oil sand

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[19]Humble witnesses: Moore, 1,100 barrels (R. 189); Sorenson, 1,100 barrels (R. 333).

Rowan & Nichols witness: Buck, 927.40 barrels (R. 249).

Dr. Gardescu testified that in 20 years' valuation experience, he had never heard of a recovery of 1,500 barrels per acre foot. (R. 458) Compare the court's finding (R. 577) that "competent petroleum engineers and geologists will agree fairly well concerning the amount of oil per acre foot of net oil sand in place in the East Texas field."

and the oil reserves and no basis for its argument that it is being deprived of its fair share of the oil; if it is assumed, then the actual facts show that Humble's leases have not been depleted.

(3) *Present Recovery.* In stating its present "losses," the Humble followed the same deceptively simple method as in stating its past "losses": It assumed that it was legally entitled to produce in proportion to its current reserves, estimated that its current reserves are 14.3% of the total current field reserves, while it is allowed to produce only 11.17% of the current allowable, and thereby arrived at the conclusion that it is currently losing the right to produce 3.13% of the total field allowable. These estimates were adopted by the District Court. (R. 583) They have nothing whatever to do with the question of whether or not the Humble's leases are being drained by other operators, but constitute mere juggling with figures.

The position of the Railroad Commission is that there is no legal compulsion on the Railroad Commission to allow each operator to recover currently in the simple ratio of his estimated current reserves to the current reserves in the whole field, and that in fixing the proration formula, the Railroad Commission has a right to make adjustments for the varying tempos of production by the various parts of the field. In this position it believes that it has the support of this court's decision in the case of *Railroad Commission of Texas, et al.* v. *Rowan & Nichols Oil Company*, 60 S. Ct. 1021, 84 L. Ed. 983.

Since Humble has suffered no actual depletion to date, since it is now permitted a substantial current recovery, and since (as we shall discuss in the next section of this brief) Humble will ultimately recover an amount equivalent to the recoverable oil originally in place beneath its leases, it is submitted that Humble wholly failed to show that it is being arbitrarily or unreasonably treated by the Railroad Commission.

(4) *Future Recovery.* Here again, the Humble adopted the simple method of calculating its future losses by subtracting from 14.3% of the total estimated future recovery of the field 11.17% of such estimated recovery, and stating that the difference would be its future loss. By this method, the witness, T. V. Moore, reached the conclusion that the Humble's future losses would be about 100,000,000 barrels (R. 144). However, this method of estimating their future recovery so obviously overlooked the fact that the Humble properties would produce much longer than the average properties in the field, that the same witness later admitted that the Humble would not actually lose 100,000,000 barrels, but that in his judgment it would actually lose somewhere between 45,000,000 and 85,000,000 barrels (R. 145). On cross examination, this witness admitted that because of the favorable location of the Humble leases, their percentage of the field allowable would (assuming the continuation of the same proration orders) naturally increase, due to the longer producing life of their leases. (R. 194, 195) He admitted that his esti-

mates of recovery were subject to a considerable chance of error. (R. 168)

Even the District Court did not accept the Humble's estimates of future "losses," but merely found that "there is necessarily much uncertainty involved", (R. 567) that the fairway leases "may not obtain" recoveries comparable to leases in other portions of the field, that the Humble's leases "will probably ultimately suffer" if the present orders and schedules are maintained in force (R. 585), and that such loss "will probably amount to an enormous figure over a period of years" (R. 587). Nevertheless, the court was willing to make a finding that, "There is nothing in the orders or program of the Commission which even suggests that the losses already incurred by plaintiff, and to be incurred by the present program, can or will be offset by increasing the allowable of the plaintiff in the future in order to make up for any losses which have occurred or may hereafter occur." (R. 587)

This conclusion is entirely inconsistent with the facts conceded even by Humble experts that Humble's share of the production will increase as various parts of the field are abandoned and that Humble's leases, being mainly in the fairway, will have long producing lives. (R. 195)[20] They also en-

[20]It was undisputed that wells producing water will have comparatively short lives. 17% of the wells in the field are making water, but only 4.3% of the Humble wells are making water. (R. 392) Similarly, pumping wells have shorter lives than flowing wells. 26.4% of the wells in the field are on the pump, whereas only 10.5% of the Humble's wells are pumpers. (R. 392)

tirely ignore the positive testimony by the expert witnesses for the Railroad Commission that Humble will ultimately recover at least the equivalent of the oil beneath its leases.

J. S. Hudnall, a recognized expert who has specially studied the East Texas field from its first discovery to date (R. 387), stated that based on his study of the field and the Humble leases, the Humble would be permitted under the present plan of proration to recover substantially the oil in place under its leases. (R. 395-396) On cross examination, Hudnall explained that by reason of the location of the Humble leases, they would produce at least 25% longer than the average of the field, and would therefore recover at least as much oil as is now under them. (R. 414, 416) In arriving at his estimates, Hudnall took each Humble lease and made a detailed calculation of the acre feet of sand under every lease that Humble had. (R. 417)

An equally careful study of Humble's leases was made by Doctor Ionel I. Gardescu, an independent expert of recognized training and experience. (R. 448-450)[21] This witness worked two weeks "day and night" (R. 455) using all available data, rela-

[21]Doctor Gardescu's training and experience are as follows: (R. 448-450) Three years Polytechnic University, Rumania; one year Royal Technical College, Glasgow; graduate in petroleum engineering, University of Pittsburg; Ph.D. in petroleum engineering, University of California; post-graduate work, Stanford University; employed by Rumanian government and Standard Oil Company of New Jersey in Rumania; teacher in petroleum valuation, University of Pittsburg and Texas A. & M. College; research work for Texas Company and other oil companies; author of various technical articles; 20 years' experience in petroleum engineering and valuation.

tive to the Humble leases, including all information furnished to the Railroad Commission by the Humble, such as well logs, water reports, Schlumberger electrical logs, etc. (R. 450-451) From these records he calculated, using a method customarily used by him and found to be reliable, that the actual physical depletion of the Humble leases to the time of the trial was about 119,035 acre feet (R. 451) which was substantially the same as the estimate of *actual* depletion arrived at by the Humble experts. Based on their production to date, he concluded that the Humble would produce from its leases during their productive life under the method of proration attacked 780,000,000 barrels of oil, or a recovery of about 1,100 barrels per acre foot. (R. 452-453) This recovery is in excess of 14.3% of the total estimated recovery from the field.[22] This recovery is also larger than the average recovery per acre foot for the field estimated by the Humble's witnesses, T. V. Moore, who estimated 1,000 barrels per acre foot (R. 189) and I. L. Sorenson, who estimated about 900 barrels future recovery for the field as a whole. (R. 330) The inescapable conclusion is that Humble's leases will not be drained, but that their total production will at least equal the amount of recoverable oil originally beneath those leases. This witness was cross examined in detail by Humble's lawyer (R. 453-459) who brought out nothing whatever to discredit either the witness or his conclusions, and no testimony was offered in rebuttal thereto.

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[22] 14.3% of Humble's estimate of the field's total ultimate recovery, 5,000,000,000 barrels (R. 115) is 715,000,000 barrels.

The findings of the District Court are in direct disregard of all evidence based upon the well known physical characteristics of the field, and amount to a finding that the Railroad Commission is not entitled to rely on expert opinion as to future recovery in formulating the present distribution.

IV

The 20-barrel base or minimum allowable is reasonably necessary to permit a fair recovery of oil by wells located on the western and eastern sides of the East Texas field and on small tracts, and to prevent the physical waste of oil which will be recovered only through such wells.

(1) *The minimum or base allowable*

Under the order attacked (plaintiff's Exhibit 8-A, offered R. 138, copied R. 476) each well in the field which is capable of producing 20 barrels of oil per day is allowed a base or minimum allowable of 20 barrels. (R. 581)[23] By reason of the fact that the shut-down order of the Railroad Commission allowed production from such wells for only 17 days out of the month, the average minimum allowable was reduced to 11.7 barrels per day (R. 363, 375, 403, 566).

[23] This base or minimum allowable is popularly called the "marginal" allowance, and was so referred to by witnesses in the *Rowan & Nichols* case which was tried in 1939.

The practice of the Railroad Commission of fixing a base or minimum allowable of 20 barrels to each well capable of producing that much oil has been in effect under the orders of the Railroad Commission and the proration schedules ever since June, 1933. (R. 440) There is no statutory requirement that every well in the field be allowed at least 20 barrels per day, Article 6049b applying only to "marginal" wells, which are defined in the statute as pumping wells which are incapable of producing more than 20 barrels per day.[24] The reasons impelling the Railroad Commission to grant the 20-barrel allowable are stated in the first order adopting the method of proration under attack in this case, the order of September 11, 1939 (plaintiff's Exhibit 8, offered R. 138, copied R. 473). In this order it is recited that the Commission finds from the evidence submitted at its hearing that in order for each producing well to be allowed to produce its fair share of the allowable oil from the East Texas field, and in order to prevent waste, the method of allocation and distribution of the field allowable between producing wells should incorporate a minimum well allowable. Said order continued the practice theretofore existing of fixing the minimum allowable at 20 barrels.

(2) *Objections to the minimum fixed by the Railroad Commission*

The issue in this case is not whether *some* mini-

[24]See *infra*, p. 77.

mum allowable should be granted by the Railroad Commission, but simply whether the minimum fixed by the Railroad Commission is excessive.

In a letter which it wrote to the Railroad Commission, relative to the proper order to be entered prorating the allowable in the East Texas field, the Humble stated that it would offer no objections to a formula "prescribing a reasonable minimum unit allowable." (R. 336, 337, plaintiff's Exhibit 38, offered R. 336, copied R. 545). In connection with this letter, it was stated at the trial by the Humble's attorney that the intention was to recommend a minimum allowable per unit of area on acre feet, and not per well. (R. 337) In the court's oral opinion, delivered February 21, 1940, the court states, "It is not now urged that no basic flat per well allowable should be made, but only that three-fourths of the whole should not reasonably be so apportioned." (R. 566)

The essential objection to the minimum allowable, therefore, is the same as the objection made to the same allowable in the *Rowan & Nichols* case,[25] namely that it takes up so much of the total field allowable (in this case 75%) that there is not enough left to distribute on the basis of the other factors considered in the proration formula. It is claimed that the result of this distribution is that an unduly large recovery is permitted for leases on the edges of the field or leases which are densely drilled, at the ex-

[25] 60 S. Ct. 1021, 84 L. Ed. 983

pense of leases in the "fairway." This is clearly shown by the court's oral opinion (R. 566, 567), and in the court's findings and conclusions. (R. 583)

In this connection, it should be kept in mind that the objection raised by the Humble and other similar operators is not that the regulation of the Railroad Commission permits them to recover less oil than they could recover without regulation, but simply that they are not permitted to recover what they consider to be their fair share of *the increase in the production resulting from regulation.* It was admitted that under the method of proration in effect, the entire field would recover from 25% to 50% more oil than it would recover under unregulated flow, although Mr. Moore, the Humble expert, testified that this increased recovery would go mainly to the east and west sides, whereas the fairway would recover only about the same amount of oil which it would recover under an unregulated flow. (R. 183)

Mr. Buck, expert for Rowan & Nichols Oil Company, testified that even under a straight per-well allocation, all parts of the field would receive a larger recovery than they would under unregulated flow (R. 298), while Dr. Patten testified that by reason of the regulation of the Railroad Commission, the ultimate recovery from the East Texas field had unquestionably been increased. (R. 340-341) The objections to the allowance by the Railroad Commission of a minimum allowable therefore resolved

themselves into the contentions that too much of the *increased recovery* is allowed to go to tracts which are densely drilled and to tracts having thin sands in the outer portions of the field.

(3) *The minimum fixed by the Railroad Commission is not higher than is reasonably necessary to permit the operation of wells throughout the field and in order to prevent their premature abandonment.*

As we have already pointed out, the average minimum allowable, considering the shut-down days, is only 11.7 barrels per day. This allowable is given to all wells in the field which are capable of making that amount. The reasons for granting an allowable of this amount may be briefly summarized as follows:

(a) It is necessary to give this allowable to pumping wells in order that they may not be prematurely abandoned, resulting in the confiscation of the property of the owners of such wells, and a loss of oil which can be recovered only through such wells.

(b) It permits owners of small tracts to drill and operate wells on their own tracts.

(c) It is granted by the Railroad Commission to other wells, because the Railroad Commission feels that it would be unreasonable to reduce the

better wells below the amount granted to the poor wells, in the absence of proof that a relative reduction of such better wells is necessary in order to prevent physical waste.

The evidence shows that there are 4,422 wells in the field producing water (R. 362) and that there are 6,788 pumping wells (R. 392).

The finding of the District Court apparently is that the Railroad Commission should have reduced the minimum allowable to somewhere between five and ten barrels (R. 567, 586).

There is no clear or convincing evidence in the record supporting the court's contention that a five-barrel minimum is sufficient. Mr. T. V. Moore, the expert for the Humble, testified that a five-barrel daily allowable was sufficient for an "average pumping well" (R. 181), but he admitted that he did not personally know the operating costs and that he could not testify with any authority upon this subject. (R. 182)

Mr. A. H. Rowan, President of Rowan & Nichols Oil Company, also testified that a five-barrel minimum allowable would be sufficient (R. 227, 228), but he later admitted that this included merely the operating costs and did not include any items for repaying the cost of drilling the well and equipping it with pumping apparatus, or paying reasonable interest and return on the investment. (R. 229) At one time, he testified that a pumping well could

be operated on five barrels per day with a profit of $75 to $100 per month (R. 230), but he afterwards admitted that this was impossible, since the gross income from such a well would not exceed $95 per month, and that what he really had in mind was flowing wells and not pumping wells. (R. 244)

Mr. Buck, the expert for Rowan & Nichols Oil Company, refused to testify as to whether or not a five-barrel minimum would be adequate for pumping wells in the field, as a general proposition. (R. 266) No expert for the oil companies who claimed to have any knowledge of the subject, testified as to the amount necessary to permit operation of pumping wells in the East Texas field without causing premature abandonments.

The burden was certainly upon the persons attacking the orders of the Railroad Commission to show that the orders were so unreasonable and arbitrary as not to have a rational basis. *Railroad Commission of Texas* v. *Rowan & Nichols Oil Co.*, 60 S. Ct. 1021, 84 L. Ed. 983. The evidence offered by the oil companies was at best indefinite and uncertain.

To support the allowance of the minimum permitted in the orders, the Railroad Commission offered the evidence of Mr. J. S. Hudnall, who had long experience in engineering and valuation work in the East Texas field, who testified definitely that the allowable permitted by the Railroad Commission was necessary to prevent abandonment of

pumping wells, particularly on the west side of the field where water has encroached and the pumping costs are higher than in other portions of the field (R. 403, 435), that while a minimum of five to ten barrels might be sufficient in the center of the field where wells are flowing, it is not sufficient for wells located on the edge of the field, (R. 436) that in his own experience he had had to plug a well which was making 10 barrels per day (R. 436) and that if the present minimum were reduced, there would be danger of premature abandonment of between 3,000 and 4,000 wells. (R. 437) Dr. Patten testified that because of the shale breaks causing traps of oil in the western portion of the field, the abandonment of such wells would cause the loss of oil that can be recovered only from these wells. (R. 364)

(4) *The minimum allowable fixed by the Railroad Commission does not have the effect of confiscating the property of operators in the fairway for the benefit of operators on the west side or the east side of the field.*

(a) *West side*

The order of the Railroad Commission attacked in this case does not fix a flat per-well allowable, but grants allowables which range from about 20 barrels per well for wells on the edges of the field to over 50 barrels per well for wells located in the center of the field. (R. 350) In other words, a substantial distinction is made between leases having thick sands and wells with high potentials, the bet-

ter wells being allowed to produce in some instances as much as two and one-half times as much as wells on the edge of the field. (R. 198) The District Court found, however, that insufficient weight was given to the factor of sand thickness, and that as a result, the base or minimum allowable permitted a drainage of oil from the fairway to other portions of the field. (R. 583, 584)

It is submitted that the court's finding wholly disregards the physical facts in the field, and particularly those relating to the producing lives of the various parts of the field. While the Railroad Commission's order does not at present allocate the allowable in proportion to the estimated acre feet of sand beneath the various portions of the field, the fairway leases, by reason of their long productive life, will ultimately recover an amount of oil substantially equivalent to the recoverable oil in place beneath their leases.

It is recognized by all of the experts that the principal source of energy in the East Texas field is the water pressure (R. 575) which is exerted by the water on the west side of the field laterally and vertically, and that as the field is produced, oil is forced eastward by the water pressure. (R. 576) The effect of this water encroachment is that in those portions of the fairway where water has not yet encroached, there is still as much oil in place beneath such leases as there was originally, although the field has produced over nine years. (R. 95, 96, 106) It also inevitably follows that the leases in the fair-

way are drawing oil from the leases on the west side, that the leases on the west side will be first drowned out by water by reason of its encroachment from the west, and that if the leases on the west side of the field are not permitted to produce now at a relatively high rate as compared with other portions of the field, they will never be able to produce their oil. (R. 85, 91, 422, 446)

Abandonments are taking place on the west because of water encroachment (R. 78, 363), about 450 wells having been abandoned prior to the trial. (R. 391) The marginal allowable to the west side wells permits them to recover at the present time at a relatively high rate, thereby offsetting to some extent their handicap by reason of their short productive life and by reason of the fact that the production in other portions of the field at the same time draws oil from underneath their leases. (R. 358)[26]

(b) *East side*

The leases on the east side of the field also have a shorter life than the leases in the center of the field, but for a different reason. The oil sand in the

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[26]Testifying at another trial with reference to a per-well allowable, the Humble expert, I. L. Sorenson, said: (R. 331)

"The thinner sand areas to the westward if allowed to be drilled to the same density as the thick sand section would be a fair proposition because the *lower structure wells would be drowned out at an earlier time and the thick sand section wells would produce longer and thereby recover their fair share of the oil.*"

Mr. Buck estimated that, while the west one-third of the field lost 50% of its oil under open flow, it lost only 15% to 25% under proration with a 20-barrel minimum per well. (R. 318)

East Texas field is not completely permeable, and the result has been that as the field has been produced, a pressure gradient has been set up, the high pressures being on the western side of the field next to the water-oil contact line, while the lowest pressures are on the east side of the field. While the original bottomhole pressure in the field was about 1,650 pounds per square inch, at the time of the trial the pressure gradient ranged from about 1,200 pounds per square inch on the west to an average of about 900 pounds per square inch on the east. (R. 575) The lack of pressure on the east side of the field has the result that the wells on the east side of the field are less productive[27] and go on the pump sooner than the wells in the center of the field. As the field is produced, the lack of pressure on the east side of the field has caused and will cause wells to be plugged and abandoned before the water from the west side ever reaches them. (R. 417) Unless the wells on the eastern side of the fairway are permitted to produce at a relatively high rate currently, the formation of a gas cap due to the reduction of pressure on the east side will have the effect of forcing oil down structure and away from such leases. (R. 359)

The lack of pressure on the east side is not only due to the difficulty of forcing the oil and water through the sand even in the most permeable parts of the field, but is also due to the fact that the amount

[27]East side wells will average a production of only 900 barrels per acre foot, whereas the average recovery per acre foot for the whole field will be about 1,000 barrels and for the west side about 1,100 barrels, according to Humble's T. V. Moore. (R. 189, 190)

of shale and other impermeable material increases from about 10% or 15% in the center or thickest section of the field to about 75% on the eastern side. (R. 108-109) The result of these factors is that the wells on the east side of the field have a shorter life than wells in the center of the field. (R. 206) In fact, there have been 163 wells abandoned on the east side of the field (R. 391), even though this part of the field is the highest part and would be the last to be abandoned if abandonments were solely due to the encroachment of water.[28]

Although the attempt was made to confine abandonments on the east side to a strip of several hundred feet (R. 206), Mr. Hudnall testified without contradiction that abandonments have taken place as much as a mile east of the eastern edge of the field. (R. 411) This is not confined to any particular portion of the east side of the field, but extends all up and down the east end of the field. (R. 417) The past history of the field indicates that approximately one-fourth to one-third of the abandonments will take place on the east side of the field (R. 391) and that the zone of abandonment will gradually encroach from the east side, as well as from the west side, toward the center of the field, where the longest production will take place.[29]

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[28]Even the Humble has had to abandon wells on the east side due to lack of pressure. (R. 104)

[29]To a certain extent, leases located in the eastern portion of the field; where the sands are still thick and permeable, have a structural advantage which will probably allow them to produce longer than leases to the west of them. As far as this advantage is concerned, however, it is a natural advantage by reason of position on the structure, and is an advantage which could not be eliminated by

The "fairway", not only by virtue of its greater current production in comparison with other portions of the field but also because of its long producing life, will produce at least the equivalent of the recoverable oil in place beneath that section of the field. (R. 432-433)[30] As the western and eastern sides of the field are abandoned, those wells which are left in the center of the field, where most of the Humble's wells are located, will receive a larger percentage of the current allowable, because of the fact that there will be fewer wells among which to divide the total field allowable. (R. 447)

(5) *Considering the East Texas field as a whole, the minimum allowable fixed by the orders of the Railroad Commission does not permit wells drilled*

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the Railroad Commission by any method of regulated production which permits current production by all portions of the field. (R. 186, 271, 303, 319)

[30]Probably the most convincing evidence that the leases in the fairway, with the thick sand, will not lose oil by reason of the Railroad Commission's proration formula, is to be found in the testimony of Mr. I. L. Sorenson, one of the experts for the Humble, at the trial of another case, in which the Humble Oil & Refining Company was a party. Speaking with reference to a method of proration under a formula which was substantially a per well allowable, Mr. Sorenson testified as follows with reference to the effect of the longer producing life of the center of the field, as compared with the leases on the eastern side of the field: (R. 331-332)

"Q. Then, according to your contention, one well in an area where there is 100 feet of sand will drain an area just as far as a well located in an area where there is ten feet of sand, all things being equal?

"A. Yes, sir. *the longer life will make up the difference.*

"Q. Does that apply to the *east side* of the field too?

"A. It applies to the east side in the sands if they are higher on the structure and the permeable sands they will have a very long life, *but beyond the fairway going eastward the dense tight sands will have a shorter producing life. They will die out because not enough pressure there to shove any oil into the wells in the tight sand areas. They will die out sooner. That is being effected now. We are feeling that on a good many leases at this time.*"

upon densely drilled tracts to recover a disproportionate share of their total allowable.

The Railroad Commission order does not ignore acreage, but makes it one of the factors in determining the allowable of each well. (R. 582) By the application of this factor, wells on less densely drilled tracts are given a higher allowable than wells on densely drilled tracts. (R. 350, 198, 199) The complaint against the Commission's plan in this respect is essentially that not enough weight is given to acreage.

The East Texas field is drilled to a density of about one well to 5.17 acres, and the leases of Humble Oil & Refining Company are only slightly less densely drilled, the Humble leases being drilled to a density of one well to 5.8 acres. (R. 578) Of the 2,545 wells drilled on the Humble leases, 1,527 wells, or about 60% have been drilled on the Humble's application as exceptions to Rule 37. (R. 463) The Humble is not complaining of any refusal by the Railroad Commission to grant them additional drilling permits. (R. 460).

The spacing rule for the East Texas field was not designed to fix a spacing of 10 acres in the East Texas field, but was designed to permit the Railroad Commission of Texas to supervise the drilling of wells in the field, in order to insure the maximum recovery of oil from the field.[31] Under Rule 37, the

[31]See *Gulf Land Co.* v. *Atlantic Refining Co.*, 134 Texas 59, 69: "Before proceeding further, we wish to say that we do not understand that the Commission, by the promulgation of Rule 37, has undertaken to say that it will be presumed that any well drilled at lesser distances than the minimum spacing distances named in the rule will cause waste, in the sense that in such instances oil will ultimately be lost in the ground that would be saved if such minimum spacing distances were observed. The Commission is charged generally with the conservation of oil and gas in their production, storage, and transportation. Art. 6014, as amended. The Commission must make rules, regulations, and orders to accomplish conservation of oil and gas. Art. 6029, as amended. One of the things that the Commission must do to conserve oil and gas is to see that oil and gas fields are drilled in an orderly and scientific manner. *In order to accomplish orderly drilling, the Commission has simply promulgated a rule fixing minimum spacing distances at which wells may be drilled without application, notice, or hearing.* Any one desiring to drill a well at a lesser distance must secure a special permit, after notice and hearing. Such applicant assumes the burden of proof that such well is necessary to prevent waste, or to prevent the confiscation of property. After the Commission acts, its order either way is presumed to be valid. Railroad Commission v. Magnolia Petroleum Co., 130 Texas 484, 109 S. W. (2d) 967. *Simply stated, the Commission must supervise the development of oil and gas fields. In order to do this, it has the power to devise some reasonably definite plan or pattern to start with. It has devised a plan or pattern by which it starts by allowing wells to be drilled, as a matter of course, at certain minimum distances.* After that, in order to drill wells, special permits must be had." (Our emphasis)

[32]This was the testimony of I. L. Sorenson, one of the Humble experts, who admitted that at a prior trial he had testified as follows, with reference to the spacing of wells by the Railroad Commission: (R. 332)

"Q. In arriving at the number of wells a man is entitled to drill in any given area you give no consideration whatever to the thickness of the sand; that is not a factor you would take into consideration?

"A. *No, I would consider the adjoining tracts to the lease in question. If you maintained that average you will get your fair share of the oil.*"

Railroad Commission follows the policy of generally allowing each operator to drill to a density comparable with that of the density within the area surrounding his lease. By maintaining about the average density of surrounding leases, each operator will be able to obtain substantially his fair share of the oil.[32] The East Texas field, because of the existence of many small tracts, and a great diversity of surface ownership, has not been regularly drilled,

but in this respect, the East Texas field is no different from other fields which were developed at about the same time. (R. 297-298)

There was much talk at the trial of extreme examples of very dense drilling, and of course examples can be found where the leases of the Humble Oil & Refining Company will be at a density disadvantage as compared with other leases in the field. It was admitted, however, that "quite a number" of examples could be shown in which the Humble leases are very densely drilled and have an advantage. (R. 184)

In the whole field there are 13,977 wells on leases which are drilled to a density of one well to five acres or more, whereas there are only 11,787 wells on tracts drilled to a density of one well to less than five acres. (R. 98) Leases drilled on very small tracts have very little influence on the allowables granted to other wells, because there are so few wells drilled on small tracts. (R. 357) Wells drilled on tracts where the density is one well to less than one acre comprise only 3.43% of the total number of wells in the field. (R. 356) About two-thirds of the wells in the field are located on leases drilled to approximately the same density as the leases of Humble Oil & Refining Company. (R. 357)

Under Rule 37, permits to drill wells upon small tracts are granted by the Railroad Commission only after a hearing, and as a result of a finding by the Railroad Commission at such hearing that the

drilling of such wells is necessary to prevent physical waste or to prevent the confiscation of the property of the operator making the application for the well. Persons who are dissatisfied with the orders of the Railroad Commission granting permits to drill wells as exceptions to Rule 37, are authorized by the statute[33] to appeal to the District Court of Travis County, Texas, and in many cases the oil companies have taken advantage of this provision of the statute. Some of the permits have been canceled by the courts, while others have been upheld. Each of the permits which is now in effect represents a finding by the Railroad Commission, either unassailed in court or supported in court upon attack, that the well in question is necessary either to prevent waste or to prevent the confiscation of property. For the purposes of this case, therefore, it must be assumed that each of the permits for each of the wells in the field was validly granted upon facts duly sustaining the orders of the Railroad Commission, and that the operator of each of these wells has a vested right therein which the Railroad Commission cannot disregard in distributing the allowable production in the East Texas field.

The granting by the Railroad Commission of a minimum allowable to all the wells in the field has encouraged the development of the field, with a consequent increased recovery of oil which otherwise would not be produced. For example, since January 1, 1934, some 3,550 wells have been drilled around

[33]Article 6094c, Section 8, Revised Civil Statutes, *infra* p. 81.

the margins of the East Texas field, thereby extending the developed portions of the field. These wells will produce about 100,000,000-150,000,000 barrels of oil, and a substantial part of their production would not have been produced at all if these wells had not been drilled. (R. 402-403) In other parts of the field, where local traps exist, the drilling of wells at a relatively high density is necessary in order to prevent the waste of oil which cannot be recovered, even through wells on the property of other operators. (R. 364)[34].

While densely drilled leases may for the time being produce at a greater rate than less densely drilled tracts, the densely drilled areas will produce for a shorter period of time than the less densely drilled areas. (R. 197, 404) The longer life expectancy of the less densely drilled tracts is therefore a compensating factor which tends to offset any current advantages received by relatively densely drilled leases.

V

The proration of the production from the East Texas field on the basis of current reserves would give unfair advantage to the

[34] By drilling additional wells, the Humble would recover additional oil which will not be produced through any existing wells, and would thereby prevent waste. (R. 415, 416) Humble's attorneys, however, expressly stated that they did not wish the Railroad Commission to consider giving them permits to drill more wells. (R. 461; 469).

leases in the fairway, where most of the leases of the Humble Oil & Refining Company are located, and would result in the confiscation of the property of other operators.

(1) *The Position Taken by the Humble and the District Court*

The Humble Oil & Refining Company has consistently contended that the allowable from the East Texas field should be substantially prorated on the basis of the current reserves beneath its leases as compared to the reserves in the entire field.[35] The District Court in effect adopted Humble's contention as to the proper basis of proration. The interlocutory injunction obtained by the Humble on August 11, 1940, enjoined the Railroad Commission from enforcing any order against the leases of the Humble Oil & Refining Company that restricted their production below 144% of the amount allocated to such leases under the orders of the Railroad Commission which were then in effect, this percentage having been arrived at on the basis of the Humble's current reserves. (R. 40) In its findings and conclusions, after the trial on the merits, the District Court measured the Humble's right to recover solely by the standard of whether it was permitted to recover in proportion to its current reserves. (R. 578, 583, 585)

[35] See Humble's application to Railroad Commission, dated June 16, 1939 (Plaintiff's Exhibit No. 31, offered R. 335 copied R. 515); Humble's letter to the Railroad Commission, dated August 8, 1939 (Plaintiff's Exhibit No. 38, offered R. 3[illegible], copied R. 545); Humble's complaint (R. 3, 10, 11, 24, 25, 26); Humble's supplemental complaint (R. 45, 51).

(2) *Inaccuracy of Estimates of Reserves*

The court finds that oil reserves can be accurately calculated (R. 577), but the testimony of all experts showed that any estimates of reserves are subject to serious errors. Even estimates of saturated sand are subject to "inherent errors" (R. 191, 194)[36] and admittedly may be inaccurate as much as 10%. (R. 82, 169) Even after the acre feet of sand are estimated as accurately as possible, the estimates of oil reserves may be far from accurate, due to varying factors affecting recovery. (R. 354) Mr. Buck admitted that estimates of reserves may be inaccurate as much as 30%. (R. 317). This was emphatically shown by the fact that Mr. Buck had raised his estimate of the ultimate recovery from the East Texas field by *one billion barrels* since the trial of the first *Rowan & Nichols* case in 1939, or about 33 1/%. (R. 305-306)[37] He also increased the estimate of recoverable oil remaining in the East Texas field about *one billion barrels* over his estimate of the previous trial, or about 50%. (R. 308) It is submitted that estimates that are subject to such wide variations within a year's time are not a safe guide for the Railroad Commission

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[36]The Humble's estimate of the original number of acre feet in the field was reduced from its estimate of 5,208,000 at the August, 1939, hearing before the Railroad Commission to 4,9[illegible]4,000 at the trial, a difference of some 234,000 acre feet. (R. 192)

[37]Even at this trial, Mr. Buck's estimates of total and remaining reserves were about 350,000,000 barrels below the Humble's similar estimates: Buck, total reserves, 4,628,054,299 barrels. (R. 250), remaining reserves, 3,180,232,515 barrels (R. 251). Humble, total reserves, 5,000,000,000 barrels (R. 115), remaining reserves, 3,600,000,000 barrels (R. 115).

in formulating its proration orders, and certainly they do not form a sufficiently definite and certain basis for holding the Railroad Commission's action to be arbitrary.

(3) *Unfairness and Wastefulness of Proration Based on Current Reserves*

More important than the uncertainty of calculating reserves, however, is the unfairness of the distribution that would result if proration were on the basis of current reserves. Because of the recognized facts of the migration of oil from the western side of the field toward the center and the varying productive lives of the various portions of the field, it is obvious that a proration order based purely on current reserves or current acre feet of oil saturated sand would not achieve an equitable result, but would permit the leases in the center of the field, having the longest life, to produce many times the equivalent of the reserves originally beneath such leases.

It was admitted by I. L. Sorenson, expert for the Humble, that it was probably true that a method of proration based on current reserves would permit leases in the fairway and eastern portion of the field to recover more than their recoverable oil in place, while leases on the west side would lose, and that the position on the structure should be taken into consideration by the Railroad Commission. (R. 130) Mr. Buck, the expert for Rowan & Nichols Oil Company, admitted unequivocally that an allo-

cation based strictly on reserves would not be fair. (R. 295) Dr. Patten (R. 352, 353, 354) and Mr. Hudnall (R. 399) testified emphatically that a method of allocation based upon current reserves, which necessarily ignores the time element, would not produce a fair result, pointing out that because of the migration of oil, the percentage of the total current reserves of each lease was constantly changing, that the leases in the center of the field were gaining oil from the west and on a proration based on current reserves would produce not only currently many times what other leases are producing but would also produce much longer.

Proration entirely on the basis of current reserves would reduce the current allowables on wells on small tracts or on leases having thin sands so low as to make it impossible for such leases to be drilled and oil produced therefrom. As we have pointed out, even the Humble and the District Court shrank from eliminating a minimum allowable altogether.

No practical method of proration would permit leases in the field to recover *exactly* the amount of oil in place beneath such leases, and a certain amount of migration is inevitable, unless the center and eastern portions of the field are completely closed down, while the western portions of the field are allowed to produce their oil. (R. 355-356) However, the Raliroad Commission's plan of proration permits a recovery by each section of the field of substantially its reserves as near as this result can be practically achieved. (R. 430, 432, 433)

The District Court apparently wholly disregarded the fact that *current* recovery and *total ultimate* recovery are necessarily determined by very different factors. By requiring in effect that the Railroad Commission prorate production on the basis of current reserves, the court sponsored a plan which will inevitably lead to a total ultimate recovery by leases which will be entirely out of proportion to the recoverable oil originally in place beneath such leases. In this respect, the District Court's decision is in conflict with the decisions of the Supreme Court of Texas that each lease owner is entitled to recover the equivalent of the recoverable oil beneath his lease. *Brown* v. *Humble Oil & Refining Co.*, 126 Texas 296; *Gulf Land Co.* v. *Atlantic Refining Co.*, 134 Texas 59, as well as being in conflict with the decision of this court in *Railroad Commission of Texas* v. *Rowan & Nichols Oil Co.*, 60 S. Ct. 1021, 84 L. Ed. 983.

CONCLUSION

The decision of the District Court was rendered prior to the decision of this court in the case of *Railroad Commission of Texas* v. *Rowan & Nichols Oil Co.*, 60 S. Ct. 1021, 84 L. Ed. 983, and in view of the decisions of the District Court and the Circuit Court of Appeals in that case in effect requiring proration on the basis of current reserves. This court has since held that the Railroad Commission acted within the proper limits of its power in enforcing a proration plan which was over 98% on a per well basis,

and it necessarily follows that a plan which is only 75% on the per well basis and 25% on the basis of factors which are not assailed, is valid.

For the reasons stated, it is respectfully submitted that the judgment of the District Court for the Western District of Texas should be reversed.

Respectfully submitted,

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APPENDIX

Texas Statutes Relevant to this Appeal

(All Statutes Listed Below are Included in Texas Revised Civil Statutes, 1925, or Amendments as Indicated, and are Compiled in Volume 17 of Vernon's Annotated Civil Statutes of Texas)

Art. 6014. "Waste"

The production, storage or transportation of crude petroleum oil or of natural gas in such manner, in such amount, or under such conditions as to constitute waste is hereby declared to be unlawful and is prohibited. The term "waste" among other things shall specifically include:

(a) The operation of any oil well or wells with an inefficient gas-oil ratio, and the Commission is hereby given authority to fix and determine by order such ratio; provided that the utilization for manufacture of natural gasoline of gas produced from an oil well within the permitted gas-oil ratio shall not be included within the definition of waste.

(b) The drowning with water of any stratum or part thereof capable of producing oil or gas, or both oil and gas, in paying quanties.

(c) Underground waste or loss however caused and whether or not defined in other subdivisions hereof.

(d) Permitting any natural gas well to burn wastefully.

(e). The creation of unnecessary fire hazards.

(f) Physical waste or loss incident to, or resulting from, so drilling, equipping, locating, spacing or operating well or wells as to reduce or tend to reduce the total ultimate recovery of crude petroleum oil or natural gas from any pool.

(g) Waste or loss incident to, or resulting from, the unnecessary, inefficient, excessive or improper use of the reservoir energy, including the gas energy or water drive, in any well or pool; however, it is not the intent of this Act to require repressuring of an oil pool or that the separately owned properties in any pool be unitized under one management, control or ownership.

(h) Surface waste or surface loss, including the storage either permanent or temporary of crude petroleum oil, or the placing any product thereof, in open pits or earthen storage, and all other forms of surface waste or surface loss, including unnecessary or excessive surface losses, or destruction without beneficial use, either of crude petroleum oil or of natural gas.

(i) The escape into the open air, from a well producing both oil and gas, of natural gas in excess of the amount which is necessary in the efficient drilling or operation of the well.

(j) The production of crude petroleum oil in excess of transportation or market facilities or reasonable market demand. The Commission may determine when such excess production exists or is imminent and ascertain the reasonable market demand.

The Commission may consider any or all of the above definitions, whenever the facts, circumstances or conditions make them applicable, in making rules, regulations or orders to prevent waste of oil or gas.

Nothing in this Section shall be construed to authorize limitation of production of marginal wells, as such marginal wells are defined by Statute, below the amount fixed by Statute for such wells. (Acts 1919, p. 285; Acts 1929, 41st Leg., p. 694, ch. 313; Acts 1931, 42nd Leg., 1st C. S., p. 46, ch. 26, par. 1; Acts 1932, 42nd Leg., 4th C. S., p. 3, ch. 2, par. 1; Acts 1935, 44th Leg., p. 180, ch. 76, par. 2.)

Art. 6029. Rules and regulations

The Commission shall make and enforce rules, regulations or orders for the conservation of crude petroleum oil and natural gas and to prevent the waste thereof, including rules, regulations or orders for the following purposes:

(1) To prevent the waste, as hereinbefore defined, of crude petroleum oil and natural gas in

drilling and producing operations and in the storage, piping and distribution thereof.

(2) To require dry or abandoned wells to be plugged in such way as to confine crude petroleum oil, natural gas, and water in the strata in which they are found and to prevent them from escaping into other strata.

(3) For the drilling of wells and preserving a record thereof.

(4) To require wells to be drilled and operated in such manner as to prevent injury to adjoining property.

(5) To prevent crude petroleum oil and natural gas and water from escaping from the strata in which they are found into other strata.

(6) To establish rules and regulations for shooting wells and for separating crude petroleum oil from natural gas.

(7) To require records to be kept and reports made.

(8) It shall do all things necessary for the conservation of crude petroleum oil and natural gas and to prevent the waste thereof, and shall make and enforce such rules, regulations or orders as may be necessary to that end.

(9) To provide for the issuance of permits, tenders, and other evidences of permission when the issuance of such permits, tenders, or permission is necessary or incident to the enforcement of its rules, regulations, or orders for the prevention of waste, (Acts 1919, p. 285; Acts 1931, 42nd Leg., 1st C. S., p. 46, ch. 26, par. 15; Acts 1932, 42nd Leg., 4th C. S., p. 3, ch. 2, par. 7; Acts 1935, 44th Leg., p. 180, ch. 76, par. 4.)

Art. 6042. Powers not limited

Particular powers herein granted to the Commission shall not be construed to limit the general powers conferred by law, and until set aside or vacated by some order or decree of a court of competent jurisdiction, all orders of the Commission as to any matter within its jurisdiction shall be accepted as prima facie evidence of their validity.

Art. 6049b. Marginal wells defined; curtailing production

Sec. 1. The term "Marginal Well" as used herein means a pumping oil well capable, under normal unrestricted operating conditions, of producing such daily quanties of oil as herein set out as would be damaged, or result in a loss of production ultimately recoverable, or cause the premature abandonment of same, if its daily production were artificially curtailed. The following described wells shall be deemed "Marginal Wells" in this State:

(a) Any pumping oil well within this State having a daily capacity for production of ten (10) barrels or less, averaged over the preceding thirty (30) consecutive days, producing from a depth of two thousand (2,000) feet or less:

(b) Any pumping oil well within this State having a daily capacity for production of twenty (20) barrels or less, averaged over the preceding thirty (30) consecutive days producing from a horizon deeper than two thousand (2,000) feet and less in depth than four thousand (4,000) feet:

(c) Any pumping oil well within this State having a daily capacity for production of twenty-five (25) barrels or less, averaged over the preceding thirty (30) consecutive days, producing from a horizon deeper than four thousand (4,000) feet and less in depth than six thousand (6,000) feet:

(d) Any pumping oil well within this State having a daily capacity for production of thirty (30) barrels or less, averaged over the preeeding thirty (30) consecutive days, producing from a horizon deeper than six thousand (6,000) feet and less in depth than eight thousand (8,000) feet:

(e) Any pumping oil well within this State having a daily capacity for production of thirty-five (35) barrels or less, averaged over the preceding thirty (30) consecutive days, producing from a horizon deeper than eight thousand (8,000) feet. (As amended Acts 1933, 43rd Leg., p. 215, ch. 97.)

Sec. 2. To artificially curtail the production of any "Marginal Well" below the marginal limit as set out above prior to its ultimate plugging and abandonment is hereby declared to be waste, and no rule or order of the Railroad Commission of Texas, or other constituted legal authority, shall be entered requiring restriction of the production of any "Marginal Well" as herein defined. (Acts 1931, 42nd Leg., p. 92, ch. 58.)

Art. 6049c. Oil and gas conservation, powers and duties of Railroad Commission

Powers and duties of Railroad Commission

Sec. 5. The Commission shall have the power, and it shall be its duty, from time to time to inquire into the production, storage, transportation, refining, reclaiming, treating, marketing or processing of crude petroleum oil and natural gas, and the reasonable market demand therefor, in order to determine whether or not waste exsits or is imminent, or whether the oil and gas conservation laws of Texas or the rules, regulations, or orders of the Commission promulgated thereunder are being violated. . . . (As amended Acts 1932, 42nd Leg., 4th C. S., p. 3, ch. 2, par. 3; Acts 1934, 43rd Leg., 2nd C. S., p. 104, ch. 45, par. 1; Acts 1935, 44th Leg., p. 180, ch. 76, par. 5.)

Hearing by Commission as to waste

Sec. 7. Upon the initiative of the Commission,

or upon the verified complaint of any person interested in the subject matter, that waste of crude petroleum oil or natural gas is taking place in this State, or is reasonably imminent, the Commission may hold a hearing, at such time and place as it may fix, to determine whether or not waste is taking place, or is reasonably imminent and what, if any, rule, regulation, or order should be made or what, if any, other action should be taken to correct, prevent or lessen such waste. At said hearing all parties interested shall be entitled to be heard and introduce evidence and to require the attendance of witnesses, and the production of evidence may be required as provided by law. If upon the hearing the Commission shall find that waste is taking place, or is reasonably imminent, the Commission shall make such rule, regulation or order as in its judgment is reasonably required to correct, prevent or lessen such waste.

In the event any such rule, regulation or order which the Commission may adopt provides for the limitation or fixing of the production of crude petroleum oil, or of natural gas from wells producing gas only, in any pool or portion thereof, the Commission shall distribute, prorate, or otherwise apportion or allocate, the allowable production among the various producers on a reasonable basis.

From and after the promulgation of any rule, regulation or order of the Commission it shall be the duty of each person affected thereby to comply with the same. (As amended Acts 1932; 42nd Leg., 4th

C. S., p. 3, ch. 2, par. 5; Acts 1935, 44th Leg., p. 180, ch. 76, par. 6.)

Suits authorized by persons aggrieved by Commission's regulations or orders

Sec. 8. Any interested person affected by the conservation laws of this State relating to crude petroleum oil or natural gas, and the waste thereof, including this Act, or by any rule, regulation or order made or promulgated by the Commission thereunder, and who may be dissatisfied therewith, shall have the right to file a suit in a Court of competent jurisdiction in Travis County, Texas, and not elsewhere, against the Commission, or the members thereof, as defendants, to test the validity of said laws, rules, regulations or orders. Such suit shall be advanced for trial and be determined as expeditiously as possible and no postponement thereof or continuance shall be granted except for reasons deemed imperative by the Court. In all such trials, the burden of proof shall be upon the party complaining of such laws, rule, regulation or order; and such laws, rule, regulation or order so complained of shall be deemed prima facie valid. (As amended Acts 1932, 42nd Leg., 4th C. S., p. 3, ch. 2, par. 8; Acts 1935; 44th Leg., p. 180, ch. 76, par. 14.)

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No. 57.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 57.

RAILROAD COMMISSION OF TEXAS, ET AL., *Appellants,*

v.

HUMBLE OIL & REFINING COMPANY, *Appellee.*

BRIEF FOR APPELLANT, G. A. SADLER.

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No. 57.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

RAILROAD COMMISSION OF TEXAS, ET AL., *Appellants,*

v.

HUMBLE OIL & REFINING COMPANY, *Appellee.*

BRIEF FOR APPELLANT, G. A. SADLER.

OPINION BELOW.

The opinion of the United States District Court for the Western District of Texas (a three-judge court) is not reported. An informal statement was made orally by the Court on February 21, 1940, (R. 564) and findings of fact and conclusions of law were entered on March 20, 1940. (R. 573)

JURISDICTION.

The jurisdiction of this Court is invoked under Sections 238 and 266 of the Judicial Code, as amended by the Act of February 13, 1925. (U. S. Code, Title 28, Sections 345 and 380) The judgment here appealed from was dated March 19, 1940, and was filed on March 20, 1940. (R. 570) The appeal was allowed in this case by an order of the Dis-

trict Court entered on April 1, 1940. (R. 596) The record was filed in this Court on April 19, 1940, and the order noting probable jurisdiction was entered on June 3, 1940.

STATEMENT.

This suit was brought by the Humble Oil & Refining Company, the Appellee, against the State authorities, including Appellant G. A. Sadler as a member of the Railroad Commission of Texas and as an individual, to obtain temporary and permanent injunctive relief against the enforcement of the proration Orders of the Railroad Commission of Texas relating to the East Texas field, on the ground that these Orders are not "on a reasonable basis" as required by statute and deprive it of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States. There being no diversity of citizenship upon which to bottom jurisdiction, the Court is faced solely with the question of the reasonableness and validity, when challenged by appeal to the Fourteenth Amendment, of the proration Orders insofar as they apply to the respondent's wells.

(a) Proceedings Below.

This suit was heard by the District Court prior to the decision of this Court in *Railroad Commission of Texas* v. *Rowan and Nichols Oil Company*, 60 S. Ct. 1021, 84 L. Ed. 983, which was a suit involving similar issues and an earlier proration order of the Commission. The instant suit was heard jointly with a second suit by the Rowan and Nichols Oil Company on behalf of a lease not hitherto involved; this second *Rowan* case is now on appeal in this Court as *Railroad Commission of Texas* v. *Rowan and Nichols Oil Company*, No. 218, October Term, 1940.

A preliminary injunction was granted to the Humble Oil and Refining Company on August 11, 1939, against the enforcement of the proration Order dated June 19, 1939. (R. 38) This Order was the same in substance as the pro-

ration Order subsequently upheld by this Court on June 3, 1940, *Railroad Commission of Texas* v. *Rowan and Nichols Oil Company, supra.* No appeal was taken. As in that case, the Commission was not only temporarily enjoined from enforcing its Order but likewise from interfering with the Appellee's producing oil currently in an amount which is in the same proportion to the total allowable production as the estimated recoverable oil under its leases is to the estimated recoverable oil under the field as a whole. (R. 40)

After duly scheduled hearings by the Commission at which evidence was taken with reference to the advisability of changing the proration Order, a new Order was promulgated on September 11, 1939, and subsequently was readopted in the State-wide Order of September 29, 1939. While these Orders increased the allowable production for the Appellee, they did not increase it to the degree demanded by the Appellee and the Appellee charged they had the same infirmity as the earlier Orders. However, upon filing and hearing of a supplemental complaint (R. 41) a second interlocutory judgment was denied on November 30, 1939. (R. 69)

Hearing on the prayer for a permanent injunction was opened on February 13, 1940,* and on February 21, 1940, the District Court announced that it would enter judgments in behalf of both the Humble and the Rowan and Nichols companies permanently enjoining the enforcement of the Orders and the method of proration they embodied. (R. 564)

The Commission having decided to appeal, final judgment was entered on March 20, 1940, permanently enjoining the defendants from enforcing or executing the Order of the Railroad Commission, but the Court granted a stay for a period of 60 days from the date of the judgment to permit the perfecting of this appeal. (R. 570) Upon the

*It was stipulated that it would be necessary to amend the pleadings to contain the subsequent orders periodically issued by the Commission embodying substantially the same method of proration.

filing of this appeal, this Court in turn granted a stay pending the determination of the case.

(b) Orders in Issue.

The Orders of June 19, 1940, were substantially identical with those at issue in the first *Rowan* case. (R. 9) The total field allowable was set, and then was distributed among the wells as follows. All wells incapable of producing more than twenty barrels a day were allowed to produce to capacity in accord with the Marginal Well Law. Then all wells in the field were granted a minimum allowable of twenty barrels; thus, no good, flowing well was curtailed below the minimum established by law to protect the marginal wells. The balance of the field allowable thus determined was allocated to the more productive wells by multiplying the factor of 2.32 per cent to the hourly potential of the wells, so that those wells whose hourly potential multiplied by 2.32 per cent totalled more than twenty barrels per day received an hourly allowable graduated up from twenty barrels daily to about twenty-six barrels daily. Because of the limited allowable for the field as to the amount which it is possible to produce without waste and because of the large number of wells still producing, about 98 per cent of the total allowable was allocated on a per well basis.

The subsequent Orders of September 11, 1939, (R. 473) and of September 29, 1939, (R. 476)* likewise maintained the twenty barrel a day factor in the proration formula but instead of the straight potential basis of allocating the balance of the field allowable, they provided a formula giving weight to the factors of potential, bottom hole pressure and sand thickness. Under these Orders, only about 75 per cent of the total allowables was consumed by allocations on the twenty barrels per well basis. (R. 582) In this respect,

*The Order of January 24, 1940, the last Order before the trial of this case continued to reenact this method of proration. (R. 487)

these Orders are more favorable to the larger and more productive properties than were the earlier Orders which were passed on favorably in the first *Rowan* case.

(c) Basis for Appellee's Attack.

The Appellee's leases "cover" approximately 14,656 surface acres in the field, or about 11.4 per cent of the producing acreage. While the leases are scattered, some on the west and some in the east, most of its leases are located in the center of the field, in the so-called "fairway". (R. 577) It estimates that its leases originally contained approximately 14.3 per cent of the acre-feet of net oil sand in the field and that at the present time it still holds 14.3 per cent of the acre-feet. (R. 577) As in the first *Rowan* case, Appellee has contended that it is legally entitled to recover currently an amount of oil which is in the same proportion to the total allowable for the entire field as the estimated "recoverable" oil underneath its leases is to the estimated "recoverable" oil under the field as a whole. Hence, it contends that it is entitled to allocations for its leases amounting to 14.3 per cent of any total daily field allowable. (R. 11, 45) Under the June Orders attacked, Appellee's allowable amounted to 9.932 per cent of the total daily field allowable while, under the September Orders attacked, Appellee's allowable was raised to 11.17 per cent of the total daily field allowable. (R. 582) It contends therefore that currently it is being deprived of the privilege of producing 3.13 per cent of the field allocation, and that this is unreasonable and confiscatory.

The Appellee attacked the Orders of the Commission on the ground that they do not allocate allowable production to its leases "on a reasonable basis" as required by statute (Tex. Rev. Civil Stats., 1925, Art. 6049c) and as a consequence the Orders result in confiscating the oil of the Appellee. The Orders are not "on a reasonable basis" because they are bottomed on a formula giving weight to physical factors other than simply the ratios of estimated

acre-feet of reserves. The Commission denies that the Orders are not valid and reasonable and alleges that by virtue of the various factors in its proration formula all properties in the field, including those of the Appellee, will recover substantially the equivalent of the oil in place in the various properties. (R. 53)

In the Court below only excerpts rather than the entire Record were introduced by the Appellee before the Commission. Independent testimony was introduced by the Appellee, some of it at variance with its testimony before the Commission. The Commission introduced expert testimony in its defense. The Court below, prior to the decision here in the first *Rowan* case, adopting the Appellee's estimates (R. 577) and following its line of reasoning, (R. 583) found the Orders discriminated against the Appellee. It found that this was due to the large percentage of the field allowable distributable by the twenty barrel per well factor. (R. 583) It found the allocation of twenty barrels per well to be arbitrary, unreasonable and confiscatory in violation of the Fourteenth Amendment. (R. 585) Injunction was therefore granted.

SPECIFICATION OF ERRORS.

The three-judge District Court erred:

1.

In holding that the proration Orders of the Railroad Commission of Texas of September 11, 1939, September 29, 1939, and January 24, 1940, and the schedules issued in connection therewith for the East Texas field, as interpreted, applied and enforced against the plaintiff, are unreasonable, discriminatory, confiscatory and void as to plaintiff.

2.

In holding that the Orders of the Railroad Commission of September 11, 1939, September 29, 1939, and January

24, 1940, and the schedules issued in connection therewith for the East Texas field, as interpreted, applied and enforced against plaintiff, do not allocate the production in the field on a reasonable basis, as required by the statutes of the State of Texas.

3.

In holding that the Orders of the Railroad Commission of September 11, 1939, September 29, 1939, and January 24, 1940, and the schedules issued in connection therewith for the East Texas field, as interpreted, applied and enforced against the plaintiff, operate to confiscate plaintiff's property and unreasonably discriminate against plaintiff, contrary to the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

4.

In holding that the Order of the Railroad Commission of June 19, 1939, for the East Texas field, and the schedules issued in connection therewith, as interpreted, applied and enforced against the plaintiff, were unreasonable and void as to plaintiff and did not allocate the production in the field on a reasonable basis as required by the Texas statutes.

5.

In holding that the Order of the Railroad Commission of June 19, 1939, for the East Texas field, and the schedules issued in connection therewith, as interpreted, applied and enforced against the plaintiff, deprived the plaintiff of its property without due process of law and denied to it the equal protection of the laws contrary to the Fourteenth Amendment to the Constitution of the United States.

6.

In holding that the plaintiff is legally entitled to recover currently an amount of oil which is in the same proportion to the total allowable for the East Texas field as the esti-

mated recoverable oil underneath the plaintiff's lease is to the estimated recoverable oil under the East Texas field as a whole.

7.

In holding that the plaintiff is currently suffering immediate and irreparable injury from the enforcement of the orders of the Railroad Commission of September 11, 1939, September 29, 1939, and January 24, 1940.

8.

In holding that the plaintiff is without an adequate remedy at law to protect itself against alleged losses to the plaintiff under the program of regulation attacked in this action.

9.

In holding that the right to apply to the Commission for permission to drill additional wells as exceptions to the spacing rules of the Railroad Commission does not constitute an adequate remedy whereby the plaintiff can protect itself against loss and increase its share in the allowable production from the East Texas field.

10.

In holding that the plaintiff is entitled to injunctive relief from the Court, although plaintiff wholly failed to allege or prove that it had applied to the Railroad Commission for permits to drill additional wells upon its leases, or that the Railroad Commission had refused to grant it such permits.

11.

In holding that plaintiff has exhausted its administrative remedy before seeking injunctive relief from this Court.

12.

In permanently enjoining the defendants from enforcing or attempting to enforce the proration orders and sched-

ules complained of against the plaintiff and its properties in the East Texas field.

13.

In permanently enjoining the defendants from enforcing or attempting to enforce the proration orders promulgated by the Railroad Commission of Texas on September 11, 1939, September 29, 1939, and January 24, 1940, and the schedules issued in connection therewith for the East Texas oil field, and any other Orders having substantially the same effect.

14.

In finding, without sufficient evidence to support said finding, that the plaintiff has been permitted in the past to recover only 11/15ths as much oil per acre foot of its oil sand depleted as the field as a whole has been permitted to produce per acre foot of sand depleted.

15.

In finding, without sufficient evidence to support said finding, that the plaintiff is currently deprived of an opportunity to produce 3.13 per cent of the field scheduled allowable or about 3.19 per cent of the field's actual allowable.

16.

In finding, without sufficient evidence to support said finding, that there is no good reason why a minimum per well allowable of 20 barrels per day is necessary in prorating the allowable production of the East Texas field.

17.

In finding, without sufficient evidence to support said finding, that a reasonable method of distribution of the allowable production in the East Texas field can be made without using any per well minimum allowable.

18.

In finding, without sufficient evidence to support said finding, that the properties in the "fairway" of the East Texas field, except those which are very densely drilled, are being and will be severely drained by the leases lying in the eastern part of the field.

19.

In finding, without sufficient evidence to support said finding, that the proration orders attacked by the plaintiff do not afford to properties in the "fairway" of the East Texas field an opportunity currently to recover their fair share of the oil.

20.

In finding, without sufficient evidence to support said finding, that under the proration orders attacked by the plaintiff the properties in the "fairway" in the East Texas field will probably not ultimately be allowed an opportunity to recover substantially the equivalent of the recoverable reserves under them.

21.

In finding, without sufficient evidence to support said finding, that it is not necessary to restrict "fairway" properties and wells in order to protect the west side and east side properties from drainage.

22.

In finding, without sufficient evidence to support said finding, that most pumping wells in the East Texas field can be operated at a profit on a daily production of as little as five barrels each.

23.

In finding, without sufficient evidence to support such finding, that if pumping wells, producing water, should be

closed in by a restriction of their daily allowable, practically all of the recoverable oil in the tract on which such wells are located would be produced by other wells and no substantial waste would result from the abandonment of such wells.

24.

In finding, without sufficient evidence to support such finding, that practically all wells in the field have been drilled more than two years and have produced more than a sufficient amount of oil to pay for the cost of drilling, equipping and operating such wells.

25.

In finding, without sufficient evidence to support such finding, that the loss to the plaintiff under the present method of proration amounts to "a very large figure daily".

26.

In finding, without sufficient evidence to support said finding, that the loss to the plaintiff under the present method of proration will probably amount to "an enormous figure" over a period of years if the program be continued.

27.

In finding, without sufficient evidence to support said finding, that, under the operation of the present program of proration in the East Texas field, the plaintiff's share in the allowable will not increase in the future as properties on the west side of the field are depleted.

28.

In finding, without sufficient evidence to support said finding, that the orders of the Railroad Commission attacked by the plaintiff result "in a daily loss of many thousand barrels of oil worth many thousand dollars" to plaintiff.

29.

In finding, without sufficient evidence to support such finding, that a well drilled in the East Texas field will effectively drain an area of at least ten acres.

30.

In the rendition of the final judgment in this action filed and entered March 19, 1940.

SUMMARY OF ARGUMENT.

(1) The decision of the Court below, made prior to the decision by this Court in *Railroad Commission of Texas* v. *Rowan and Nichols Oil Company*, 60 S. Ct. 1021 (1940), should be reversed under the doctrine of *stare decisis*.

(2) The action of the Court below in substituting its judgment for that of the Commission, acting under legislative authority, was in error and the decision below finding the Order of the Commission in violation of the Fourteenth Amendment should be reversed. The only issue present here is whether the action of the administrative body is reasonably designed to carry out the approved legislation since if the administrative action conforms to the statute whose constitutionality has been determined, there can be no new constitutional issues. In such a case the Court cannot substitute its findings for those of the Commission.

(3) Even if the Court below should have made an independent finding, it erred in finding the Order of the Commission unreasonable. The burden of proof is upon the complaining party and the Appellee failed to prove conclusively that the Commission's action was unreasonable and arbitrary. The Appellee's calculations of its reserves and their depletion with resulting losses to it are inconclusive and contrary to its own testimony which indicates no material losses. The formula for proration it advocates, accepted by the Court below, denies to some pro-

ducing areas a right to the oil in place or its equivalent and adds to those of the Appellee migratory oil, giving it more than oil in place. Appellee failed to show conclusively that the control factor of twenty barrels per well in the Commission's Order was arbitrary and unreasonable. Having failed to sustain the burden of proof, the Appellee should have been denied injunctive relief.

ARGUMENT.

I.

The Decision of this Court in Railroad Commission of Texas v. Rowan and Nichols Oil Company is Controlling in this Case Under the Doctrine of Stare Decisis.

Subsequent to the decision by the three-judge District Court in this case, this Court handed down its decision in *Railroad Commission of Texas* v. *Rowan and Nichols Oil Company*, 60 S. Ct. 1021, 84 L. Ed. 983 (1940). In that case this Court upheld proration Orders of the Commission. The Commission's procedure in this case has been the same as in this first *Rowan* case. The Orders themselves in the two cases are substantially the same and the basis for attack by the Appellee in the two cases is practically identical.*

"The Commission has observed established procedure" (*Rowan* case, *supra*, p. 1024). The Orders in each case were promulgated after notice and hearing. No objection is made on the ground of either improper notice or hearing.

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*In neither case was there any diversity of citizenship. This Court held only the question of constitutionality to be before the federal tribunal. *Railroad Commission of Texas* v. *Rowan and Nichols Oil Company*, 60 S. Ct, 1021, 1024, 84 L. Ed. 983, 985. However, the test for validity of the reasonableness of the basis for a proration Order is substantially the same as that for the constitutional issue as stated in the first *Rowan* case, *supra*. *Gulf Land Company* v. *Atlantic Refining Company*, 134 Tex. 57, 131 S. W. (2d) 73. And the District Court below in considering also the question of the validity of the Order under the State statute so treated it. (R. 566)

(R. 468) No objection is made that the Commission did not consider all the relevant evidence presented. The Appellee concedes that its evidence was introduced in evidence at duly scheduled hearings (R. 335, 338) and that Appellee filed its protest to proposed Orders and stated its reasons to the Commission. (R. 337)

Each Order in this case "is but one more item in a continuous series of adjustments". (*Rowan* case, *supra,* p. 1026) Each Order, promulgated after hearing, is the best balance that could be struck by the Commission "with the complicated and subtle factors that must enter into such judgments" based upon the evidence then before it. The Order of June 19, 1939, is practically identical with the Order at issue in the first *Rowan* case (*supra,* p. 1021). The Orders of September 11, 1939, made changes but basically the differences were in the weighting given to the factor of twenty barrels per well and in the method of distributing the balance of the field allowable (*supra,* p. 4). Insofar as these Orders differ from the preceding ones, the change is in favor of the properties of the Appellee in this case. Whereas 98 per cent of the total allowable was prorated on the twenty barrel per well factor in the *Rowan* case, under the later Orders only 75 per cent of the total allowable was thus prorated. The weight given to bottom hole pressure, acreage and sand thickness likewise favor leases such as those of the Appellee less densely drilled than the average and on the fairway. The Appellee thus obtained a substantial increase in its total allowable.

It was conceded that the Order of September 11, 1939, was "substantially the same" as the earlier Order (R. 335) and that up to trial the "formula for the distribution among wells has been the same". (R. 338) While the same formula was used, the top allowable and number of shut down days has varied somewhat, and the shut down was subsequently applied to the statutory marginal wells. (R. 338) Such differences as there have been in the Orders since the first *Rowan* case have been merely interstitial adjustments.

The combination of factors in the proration formula "is in itself a question for administrative and not judicial judgment". (*Rowan* case, *supra*, p. 1022) Acting under legislative authority, the Commission in this case, as in the *Rowan* case, rejected the system of proration based solely upon estimated recoverable reserves as proposed by the Appellee. Appraising the conflicting expert testimony, with its own background of expert knowledge and study "of inferences bordering on conjecture", the Commission continued to follow the formula, the basic provisions of which were approved in the *Rowan* case and which it determined to be "on a reasonable basis". One of the fundamental factors in the proration formula in this case, as in the *Rowan* case, is the twenty barrel allocation per well. This Court has already found that the Commission's adoption of this factor is not "unnatural"; it has already considered the "conflict of expertise" over this issue, and has already decided the issue in favor of the Commission.

This case falling within the four corners of the decision in the first *Rowan* case, the decision below should be reversed and the injunction be denied under the doctrine of *stare decisis.*

II.

The Court Below Erred in Substituting Its Judgment for that of the Commission, Acting Under Legislative Authority, and Therefore Finding the Commission's Order Offensive to the Fourteenth Amendment.

The legislature of Texas in the exercise of its police power enacted conservation laws which provide for proration of oil production. *Texas Revised Civil Statutes, 1925, Art. 6014 et seq.* These conservation laws admittedly drastically affect property rights protected against confiscation by the Fourteenth Amendment. It is uncontested that under the common law of Texas the Appellee is the owner of the *oil in place** under its leases and

*Where gas is found with the oil the principle is, of course, applicable to the gas as well.

is entitled to produce only its oil in place or its equivalent. *Stephens County* v. *Mid-Kansas Oil & Gas Co.*, 113 Tex. 160, 254 S. W. 290; *Texas Co.* v. *Daugherty*, 107 Tex. 226, 176 S. W. 717; *Lemar* v. *Garner*, 121 Texas 502, 50 S. W. (2d) 769; *Humphreys-Mexia Co.* v. *Gammon*, 113 Texas 247, 254 S. W. 296; *Thuss, Texas Oil and Gas* (2d ed.), p. 16; 1 *Summers, Oil and Gas* (2d ed.), sec. 62, p. 124; *Hardwicke, on Texas in "History of Conservation of Oil and Gas, A Symposium"* (*American Bar Assoc., Mineral Section*), pp. 238-243.

Prior to the conservation laws, the means of producing the oil in place was governed by the common law Rule of Capture. From the earliest cases in which the Rule of Capture was embodied, the Courts have recognized the correlative rights of owners of a pool. Under the then limited knowledge of the geologic facts concerning oil accumulation and production, the Courts held that ratable taking from a common reservoir of oil was to be achieved by permitting each producer to produce whatever he could from his own wells, drilled as he deemed fit. Other producers protected their correlative rights by drilling off-set wells and producing headlong to prevent drainage by their neighbors. Thus the ability of one to capture was limited by the ability of all others simultaneously to capture. It was an attempt to establish a self-operating principle which would accord each producer his fair share of oil in a pool. *Prairie Oil and Gas Co.* v. *State of Texas*, 231 S. W. 1085; *Stephens County* v. *Mid-Kansas Oil & Gas Co.*, 113 Tex. 160, 254 S. W. 290; *Houston & T. C. Ry. Co.* v. *East*, 98 Texas 146, 81 S. W. 279; *Texas Co.* v. *Daugherty*, 107 Tex. 226, 176 S. W. 717; *Waggoner Estate* v. *Sigler Oil Co.*, 118 Tex. 509, 19 S. W. (2d) 27; *Marshall and Meyers, "Legal Planning of Petroleum Production,"* 41 Yale Law Journal 33 (1931); *Hardwicke, "Rule of Capture and Its Implications as Applied to Oil and Gas,"* 13 Tex. Law Rev. 401.

The conservation laws substitute a new rule of law governing the taking of oil. Primarily anti-waste measures,

they provide a new and more equitable rule of law regulating production both in the interests of conservation and in protecting the correlative rights of all producers in the field. The power of the legislature to subject the property of private interests to regulation whether primarily because of the public interest in conservation or in behalf of the owners of oil in the common reservoir is delimited by the Constitutional safeguards prohibiting the deprivation of property without due process of law.

This legislation has therefore been subject to judicial review. And as Chief Justice Hughes stated in *St. Joseph Stock Yards Co.* v. *U. S.*, 298 U. S. 38, 53, 56 S. Ct. 720, 726:

> "Moreover, as the question is whether the legislative action has passed beyond the honest limit of the permitted zone of reasonableness into the forbidden reaches of confiscation, judicial scrutiny must of necessity take into account the entire legislative process, including the reasoning and findings upon which the legislative action rests."

The conservation legislation providing for proration, subjected to the acid test of judicial review, has been found to be within the zone of reasonableness and not to have transcended the limits of legislative power. *Champlin Refining Co.* v. *Corporation Commission*, 286 U. S. 210, 52 S. Ct. 559; *Bandini Petroleum Co.* v. *Superior Court*, 284 U. S. 8, 52 S. Ct. 103; *Amazon Petroleum Corp.* v. *Ryan*, 293 U. S. 388, 55 S. Ct. 241; *Sterling* v. *Constantin*, 287 U. S. 278, 53 S. Ct. 159.

The fact that there is adequate legislative power to establish a system of proration for oil production has therefore already been determined in the prior cases by this Court. In this case, the constitutionality of the statute is conceded, (R. 22) and it is clear (*supra*, p. 13) that all the procedural requirements of due process have been met. *Cf. St. Joseph Stock Yards Co.* v. *U. S.*, Mr. Brandeis concurring, 298 U. S. 38, 73, 56 S. Ct. 720, 735. The only issue present here is whether the action of the administrative

body is reasonably designed to carry out the approved legislative policy* since, if the administrative action conforms to the statute whose constitutionality has been determined, there can be no new constitutional issue.

The Texas statute provides that

> "the Commission shall distribute, prorate, or otherwise apportion among the various producers on a reasonable basis." Texas Revised Civil Statutes, 1925, Art. 6049c.

Proration "on a reasonable basis" has uniformly been interpreted as proration designed to accord each producer in a field opportunity to obtain the oil in place beneath his lease. *Gulf Land Co.* v. *Atlantic Refining Co.*, 134 Tex. 57, 131 S. W. (2d) 73, 80; *Henderson* v. *Terrell*, 24 Fed. Supp. 147; *Brown* v. *Humble Oil and Refining Co.*, 126 Tex. 296, 83 S. W. (2d) 935.

Inasmuch as the legislative authority to prorate has been upheld as not being confiscatory, the Order by the Commission carrying out the legislative dictate, where there is weight to support the findings, is valid. The Orders at issue were promulgated by the Commission in the light of evidence duly presented in hearings. The Court below made an independent determination and substituted its findings for those of the Commission as to the reasonableness of a single factor in the proration formula. (R. 585) It erred in thus finding the Order of the Railroad Commission, acting under legislative authority, offensive to the Fourteenth Amendment. *Railroad Commission of Texas* v. *Rowan and Nichols Oil Company, supra; S. C. Highway Dept.* v. *Barn-*

*This is the fundamental difference between this case and *Thompson* v. *Consolidated Gas Co.*, 300 U. S. 55, 57 S. Ct. 364. In that case the Order of the Railroad Commission attempted to prorate the market for gas. The Court found that such regulation, unlike that in the case here, has no reasonable relation either to prevention of waste or the protection of correlative rights; that the statute, if it provided for such proration, was invalid, as was an Order which so construed the statute.

well Bros., 303 U. S. 177, 191, 58 S. Ct. 510; *Pacific States Box and Basket Co.* v. *White*, 296 U. S. 176, 56 S. Ct. 159. Even though the Court below reached a different conclusion from that reached by the Commission, it cannot substitute its own order for the administrative order if there is a rational basis for the order adopted by the Commission. *Cf. Rochester Tel. Corp.* v. *U. S.*, 300 U. S. 297, 57 S. Ct. 466; *Mississippi Valley Barge Line Co.* v. *U. S.*, 292 U. S. 282, 54 S. Ct. 692. The decisions are uniform in this regard. Even in "rate cases" in which the Court has found it necessary to make special exception for independent judicial determination of issues of fact bearing upon a constitutional right, the Court clearly differentiates between this type of determination and those of an administrative body acting under a statute, admittedly constitutional, but requiring the exercise of trained discretion. In *St. Joseph Stock Yards Co.* v. *U. S.*, *supra*, this Court said (p. 51):

> "When the legislature itself acts within the broad field of legislative discretion, its determinations are conclusive. When the legislature appoints an agent to act within that sphere of legislative authority, it may endow the agent with power to make findings of fact which are conclusive, provided the requirements of due process which are specially applicable to such an agency are met, as in according a fair hearing and acting upon evidence and not arbitrarily. *Interstate Commerce Comm'n* v. *Louisville & Nashville R. Co.*, 227 U. S. 88, 91; *Virginian Ry. Co.* v. *United States*, 272 U. S. 658, 663; *Tagg Bros. & Moorhead* v. *United States*, *supra*, p. 444; *Florida* v. *United States*, 292 U. S. 1, 12. In such cases, the judicial inquiry into the facts goes no further than to ascertain whether there is evidence to support the findings, and the question of the weight of the evidence in determining issues of fact lies with the legislative agency acting within its statutory authority."

III.

The Orders of the Commission Are Not Unreasonable, Arbitrary or Confiscatory, and Give to the Appellee a Fair Chance to Recover the Oil Under Its Leases, or Its Equivalent.

Physical structure of East Texas field. There is little disagreement concerning the physical structure of the East Texas field. A general geologic description of the field is set out in detail in the findings by the Court below. (R. 575) For purposes of this case it is essential to note that in cross-section from east to west the field is roughly triangular in shape with top and long side tilting upward to the east. The upper and right side are formed by impervious rock. The lower western side, beginning at the middle of the field, is an oil-water face with water pressing in under great pressure. The drive of the water furnishes the chief reservoir energy of the field, and it is one of conservation's chief functions to maintain the pressure.

With the drilling of wells, pressure differentials are created propelling the oil to the surface; the pressure moving water in to displace the oil. Pressure gradients are thus set up from west to east. Consequently, the wells on the west are the first to be drowned out by the water and are comparatively short lived. Where production from the western wells has not produced all the oil in place before water penetration, the drive of the advancing water has forced a migration of the oil eastward, draining the western part to replenish the middle of the field as oil has been produced from it. Meanwhile, wells in the thin, tight sands on the east are relatively short lived, due primarily to the pressure drop in the field. As the pressure in the field has dropped wells on the eastern edge of the field have gone dead. About two-thirds of the abandonments of wells has occurred on the western side of the field and one-third on the east side. (R. 391)

The fairway in the center of the field, having the greatest sand thickness, has the longest life expectancy and

stands to benefit by the gradual abandonment of outlying wells. Part of the fairway is underlain by water and will naturally be drowned out in due course before the part to the east. In the fairway and to the east where there is no water, oil produced has been replaced by oil drained to the property in front of the advancing water. In this area there is still as much oil in place as there was when the field was discovered, while in the western part of the fairway some water as well as oil has replaced oil withdrawn. 6,921 acres of the 14,65[illegible] acres held under lease by the Appellee are east of the wa[illegible]e in the fairway. (R. 95)

As the total number o[illegible] wells decreases due to a shrinking of the producing area, the more fortunately situated wells still enjoy the full benefit of the reservoir energy since the total optimum withdrawal from the field will be made through the steadily decreasing number of wells in the shrinking area; over a period of time wells in the fairway area will receive a markedly increased daily allowable over their prolonged life due to proration.

Basis of Appellee's case. The Appellee charged that it is not recovering its fair share of oil. This claim is based upon the assumptions (1) that it holds approximately 14.3 per cent of the net acre-feet of oil sand, (2) that it is entitled to produce currently in the ratio of its current oil reserves to the current oil reserves of the entire field (R. 3), and that (3) not being permitted to produce on this basis, it "loses" the difference between the proportion it claims of 14.3 per cent and that allowed by the Commission; hence that its properties are depleted by the extent of its "losses". In short, it claims that having produced 131,364,982 barrels (R. 116) of an estimated total production of 1,365,000,000 barrels (R. 115, 136, 578) or 9.6 per cent of the total that it has "lost" 4.7 per cent of the past production of the field. Similarly, since the Appellee, under the latest Order here in issue, is permitted to produce 11.17 per cent of the current allowable instead of the 14.3 per cent, it claims that it is losing 3.13 per cent of the current production. (R. 583)

Projecting the latest Order here in issue into the future, it calculates that its loss of the total estimated recoverable oil would be about 100,000,000 barrels. (R. 144) The Appellee conceded, however, that the relative longevity of its properties would result in an increasing percentage of the field allowable being allocated to it, therefore it scaled this figure down to somewhere between 45,000,000 and 85,000,000 barrels (R. 145) admitting these calculations to be subject to considerable chance of error. (R. 168) However, the Appellee "loses" these gigantic quantities of oil only if its leases are actually depleted by the amounts of the alleged losses; otherwise it is merely a question of timing as to when the Appellee takes the oil from beneath its leases.

The Appellee has not maintained the burden of proving the Orders of the Commission are unreasonable. It is an established principle that in challenging the validity of administrative Orders, the complaining party carries the burden of clearly establishing confiscation. *Los Angeles Gas Corp.* v. *Railroad Commission,* 289 U. S. 287, 305, 53 S. Ct. 637, 650; *Lindheimer* v. *Illinois Telephone Co.,* 292 U. S. 151, 169, 54 S. Ct. 658. And "there is a strong presumption in favor of the conclusions reached by an experienced administrative body after a full hearing". *Darnell* v. *Edwards,* 244 U. S. 564, 569, 37 S. Ct. 701, 703. The Appellee has failed to prove conclusively any one facet of its case:

(1) *The Appellee fails to prove conclusively that it has and had 14.3 per cent of the recoverable oil reserves.* The Appellee's entire case is predicated upon an ability to determine accurately the acre-feet of net oil sand, both in its leases and in the field as a whole. Appellee's contention as to its proportionate holdings in the field rests upon the testimony of two witnesses. (R. 80, 132) It is upon the basis of their studies of relative sand thicknesses and quantity of sand in the field as a whole and under Appellee's leases that Appellee claims 14.3 per cent of the "net effective sand" beneath its leases. The detailed calculations, however,

from which an administrative body or the Court could judge the accuracy of the conclusion reached were not introduced.* Repeated attempts upon cross-examination to obtain the detailed figures failed (R. 102, 188, 125) until finally the Court below said (R. 125):

> "Judge Sibley: It is your job to get ready to meet witnesses that don't agree with you about things. We are in the trial. This witness states in his opinion the depletion has been such and so spread that it averages just the same in percentage of what they still have in the sand. That is his opinion. He can't swear to that like somebody that saw something that transpired. He hasn't got the figures here, and can't back his opinion up with those details, so you will have to drop it right there, as far as he is concerned, I think."

However, the burden of proof is not upon the Commission but upon the Appellee. In subsequent testimony, Appellee's chief witness in support of another position stated that estimates of acre-feet were "subject to some inherent errors". (R. 191, 194) Since the basic data was not introduced, and since the estimates of acre-feet are unreliable, the Appellee has failed to sustain the burden of proving the major assumption in its case.

(2) *The Appellee's leases have not been depleted to the extent of the alleged losses.* While the field has been depleted by the withdrawal of an estimated 1,365,000,000

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*The importance of specific figures is vital in view of the fluidity of such data in the hands of the experts for the Appellee. In the hearing before the Commission on August, 1939, the Appellee estimated there were 5,208,000 acre-feet in the field. In the Court proceedings in February, 1940, this figure had shrunk 234,000 acre-feet to 4,974,000. (R. 192) In estimating Appellee's depletion, its engineers in August, 1939, found it to be 147,000 acre-feet but in February, 1940, the total had changed to 120,000 acre-feet. (R. 456) Another witness in opposition to the Commission in the trial of this case estimated the total oil reserves in the field to be 1,000,000,000 barrels more than he had in the hearing of the first *Rowan* case. (R. 305)

barrels (R. 115), it does not follow that the Appellee's leases were depleted by 14.3 per cent of that amount, assuming the accuracy of the ratio. As the oil has been depleted, it has been supplanted by water. Consequently, the actual depletion has occurred primarily under the leases to the west. There has been no depletion under those 6,921 acres held by the Appellee east of the water line. (R. 95) The determination of the depletion of the Appellee's leases is not a matter of striking field wide averages but of determining the actual decrease in oil bearing sands beneath Appellee's leases and of comparing the amount of depletion with the amount of actual production by the Appellee.

The highest estimate of actual depletion claimed by the Appellee is 120,026 acre-feet. (R. 334)* Witnesses for the Appellee agree that past recovery from the field has been about 1,100 barrels per acre-foot. (R. 136, 188, 333) Multiplying 120,026 acre-feet by 1,100 barrels gives 132,028,600 barrels as the amount of depletion from the Appellee's leases. Witnesses for Appellee testify that it has produced about 131,364,982 barrels. (R. 116, 137, 578). It is apparent that *on its own figures* the Appellee has produced approximately all the oil which has been withdrawn from its leases. There has been little if any drainage to date from its leases.

When confronted by this simple arithmetic, witnesses for the Appellee declared the figures they presented were "subject to some inherent errors". (R. 191, 194) One explanation offered for the error was that there was "a substantial amount of oil" below the calculated water level (R. 192), which, in substance, means there were more acre-feet than estimated. Another explanation was that, although the Appellee produced only 1,100 barrels per acre-foot depleted, the rest of the field produced 1,499 barrels per acre-foot. (R. 328) This estimate, however, is in con-

*According to the figures of another witness for Appellee, it originally had 707,770 acre feet (R. 136) and now has 595,277 (R. 327), indicating a depletion of only 112,493 acre-feet.

flict with the testimony of expert witnesses on behalf of Appellee, the *Rowan* Company and the Commission.*

The Court below, finding that "competent petroleum engineers and geologists will agree fairly well concerning the amount of oil per acre-foot of net oil sand in place in the East Texas field" (R. 577), ignored this testimony, and adopted findings of depletion estimated by the Appellee's claimed proportion of 14.3 per cent. (R. 578) However, the figure of 14.3 per cent itself is predicated upon the determination of the acre-feet of net oil sand and the amount of oil per acre-foot therein being accurate. But witnesses for Appellee concede there is inherent error in their estimates of acre-feet, an essential factor in estimating the reserves. The Appellee's and Court's findings therefore are bottomed upon "inherent error" and the burden of proof of confiscation has not been sustained.

(3) *The Appellee is not entitled to produce currently on the ratio of current reserves.* The method of proration advocated by the Appellee repudiates the basic law of ownership of oil in place. If this method were adopted, on each proration date new allowables would be predicated upon the new relationship between the reserves of Appellee's leases with the total reserves for the field. The Appellee's leases will produce 25 per cent longer than the average for the field. (R. 414) Thus by progressive stages, the Appellee would produce an ever increasing proportion of the field's reserves. (R. 194) Pressure gradients to the Appellee's leases in the fairway would be increased and oil would be drained from the lands on the west. More allowable to the fairway would mean less to the western and eastern edges and a proportionately larger utilization of the reservoir energy by the Appellee and other fairway producers. The depletion of the western and eastern portions

*Calculations by Appellee's witnesses were 1,100 barrels (R. 189, 333), by *Rowan* witness, 927.4 barrels. (R. 249) The Commission witness testified that in twenty years experience he had never heard of the recovery of 1,500 barrels per acre-foot. (R. 458)

of the field would be accelerated. Producers in those sections of the field would receive *less than oil in place* while the Appellee and others similarly situated would gain by migratory oil from the west, obtaining *more than oil in place.*

The Appellee is only entitled to the oil in place or its equivalent. The present proration Order is an attempt to so adjust producing schedules so that Appellee ultimately will receive all that it is entitled to while still giving it a fair proportion of current production.

(4) *The Commission's proration Order is not conclusively shown to be unreasonable.* The weight given to the factor of twenty barrels per well in the Commission's Order is chiefly responsible for the allotment of less than 14.3 per cent of the total allowable to the Appellee. This the Court below found to be discriminatory (R. 584) and it also found that the allocation of three-fourths of the field on a flat per well basis of twenty barrels was arbitrary and bore no relation to the prevention of physical waste. (R. 585) The Court below apparently felt that some minimum allowable could be made.* It indicated (R. 586) that a minimum of five or six barrels per well would be reasonable on the theory that the financial income would be enough to give a non-confiscatory return. Consideration of the physical problem of drainage from the leases because of too small a minimum was given little consideration.

Commission experts testified at length (R. 350, 358, 364, 403, 422, 435, 446) on the reasonableness of the minimum set by the Commission a) to prevent premature abandonment of wells, resulting in confiscation to their owners and an actual loss of oil, b) to permit small tracts to be drilled, c) to permit the more densely drilled western and eastern portions of the field to obtain their oil in place before the wells go dead, and d) to prevent waste. These

*Even the Appellee conceded the necessity of "prescribing a reasonable minimum unit of allowable". (R. 336) although there is question as to the meaning of unit. (R. 337)

basic reasons for the factor of twenty barrels per day were ignored. The Appellee took the position that in order to get its fair share of the oil, the minimum per well has to be cut and that a well can survive financially on five or six barrels per day. Testimony on this point, however, was not conclusive. The witness for Appellee who testified that a five barrel allowable is sufficient for an "average pumping well" (R. 181) admitted he did not know the operating costs of such well. (R. 182) Another witness in opposition to the Commission who testified that a five-barrel minimum allowable would be sufficient (R. 227) admitted his calculations did not include anything but operating costs. (R. 229) When shown that the gross for a pumping well with a five barrel allowable would not exceed ninety-five dollars per month, (R. 244) he retracted a statement that such an operation would result in a profit of $75 to $100 per month. (R. 230)

The Appellee has not sustained the burden of proving the twenty barrel per well factor arbitrary and beyond the discretion of the Commission.

Injunction, therefore, should have been denied.

It is not the purpose of this brief to carry the burden and to prove that the Order of the Commission is reasonable although the Record amply demonstrates that fact. Presumptiveley, the Order is reasonable since the Appellee has not conclusively proved the contrary.

CONCLUSION.

The decision of the Court below, made prior to the decision by this Court in *Railroad Commission of Texas* v. *Rowan and Nichols Oil Company*, 60 S. Ct. 1021, should be reversed under the doctrine of *stare decisis*.

For this and the other reasons stated, it is respectfully submitted that the judgment of the District Court for the Western District of Texas should be reversed.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1940

NO. 57

RAILROAD COMMISSION OF TEXAS, ET AL.,
Appellants

v.

HUMBLE OIL & REFINING CO.,
Appellee

REPLY BRIEF FOR APPELLANTS

On Appeal from the United States District Court
for the Western District of Texas

FIRM FOUNDATION—AUSTIN

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REPLY BRIEF FOR APPELLANTS

In this reply brief we shall confine ourselves to a discussion of points raised by Humble Oil & Refining Company in its brief, and relating to (1) modifications of the proration orders by the Railroad Commission since the trial of this case, and (2) questions raised by reason of the modification of its opinion by this court, on October 21, 1940, in *Railroad Com-*

mission of Texas v. *Rowan & Nichols Oil Company*,[1] which modification was made after the filing of our original brief in this case.

1. Modification of Proration Orders Since the Trial of this Case

Reference is made by the Humble in its brief (at pages 12, 13, 97) to changes made by the Railroad Commission in its proration orders subsequent to the trial in this case. Humble states in its brief (page 13) that the orders now in effect are "substantially the same" as the orders in effect at the time of the trial and Humble does not contend that the appeal is moot. However, in order that the court may understand the nature of the changes made by the Railroad Commission, the following summary is given:

The per well potential method of proration had been in effect since April, 1933, (see Humble's brief, page 23) until it was stricken down by the United States District Court on June 14, 1939, in the first *Rowan & Nichols Oil Company* case.[2] The Railroad Commission was denied a stay of this injunction and was therefore forced to permit the Rowan & Nichols wells to produce in excess of the allowable, but the Commission attempted to enforce the order against the remaining operators in the field until its appeal in the *Rowan & Nichols* case could be determined. Nu-

[1] 61 S. Ct. 66.

[2] *Rowan & Nichols Oil Co.* v. *Railroad Commission*, 28 F. Supp. 131.

merous oil companies, including the Humble, promptly applied for increases in their allowables, and on the failure of the Railroad Commission to act immediately on such requests, the Humble on July 26, 1939, filed suit asking for interlocutory relief. (R. 1) Although a hearing before the Commission on the Humble's application had been called for August 16, 1939, the District Court on August 11, 1939, granted a temporary injunction permitting the Humble to produce a flat 44% increase in the allowable of each of its wells. (R. 40)

It was obvious that, because of the large number of wells owned by the Humble, the production by Humble under the injunction while other operators were limited by the Commission's order would produce great injustices and would probably lead to general disregard of the Commission's orders and chaotic conditions. The Commission on August 15, 1939, therefore, shut the entire field down for 15 days. (R. 241) On August 16, 1939, the Commission began the hearing on the Humble application, which continued for several days thereafter. On September 11, 1939, the Railroad Commission issued a new proration order, containing the following recitals: (Plaintiff's Exhibit 8, offered R. 138, copied R. 473)

"Whereas, The method of allocation of the allowable production of the East Texas Field has been recently attacked in the Courts and the Commisison has been restrained from enforcing the provisions of said Rule as it applies to certain properties in the East Texas Field, and

"Whereas, The Commission finds that it is necessary to revise the method of allocation and distribution of the allowable oil in the East Texas Field as has been enforced and applied and to amend Rule 23 of Division 3 of the Order of October 17, 1933, in order to conform to certain standards of distribution of the allowable crude oil production between the wells in the East Texas Field as indicated as being necessary by the Courts, . . . "

In accordance with what the Commission found to be the "standards of distribution" held to be necessary by the courts, the Commission increased the total field allowable to 690,000 barrels daily and added the factors of acreage, sand thickness and pressure. (Plaintiff's Exhibit 8, offered R. 138, copied R. 473) As is shown by the recitations in the order, the per well potential method was modified, not because the Railroad Commission thought that it was unfair, but because it was attempting to comply with rules laid down by the lower federal courts.

The Humble was not satisfied with the changes made by the Railroad Commission in its orders and attacked the orders of September 11, 1939, and September 29, 1939, by its supplemental complaint. (R. 41) On November 10, 1939, the three-judge District Court denied a temporary injunction against the new method of proration. (R. 69) On February 21, 1940, after a hearing on the merits, the District Court announced that it would enjoin the new method of proration, but intimated that in case of an appeal it might grant a stay. (R. 568) After hear-

ing on a motion for a stay, the final judgment entered on March 19, 1940, provided for a sixty-day stay (R. 573) which has been extended by this court pending the determination of this appeal.

On June 3, 1940, this court handed down the decision in *Railroad Commission of Texas* v. *Rowan & Nichols Oil Co.*, 310 U. S. 573, upholding the per well potential method of proration. The compulsion which had caused the Commission to abandon the per well potential method of proration in September, 1939, was therefore removed. Obviously, the safest course for the Commission to follow was to return to the method of proration which had been specifically held to be within its power to enforce. By the order of June 19, 1940, the Commission returned to the per well potential method of proration, and, as is pointed out in the Humble's brief (at pages 12, 13) has continued the same method of proration by subsequent orders.

The trial on the merits in February, 1940, related almost entirely to the method of proration then in effect, which was inaugurated by the order of September 11, 1939. For this reason, the facts as to the per well potential method were not fully developed, as they were in the first *Rowan & Nichols* case. The return to the per well potential method of proration by the order of June 19, 1940, however, is not regarded by the Humble as making the case moot, since the present orders are "substantially the same" as the orders in effect at the time of the trial. (Hum-

ble's brief, p. 13)[3] Appellants agree that the case is not moot. The essential objection to all of the proration orders is against the base 20-barrel per well allowable. Since this feature is contained in all of the orders, the return to the per well potential order by the Railroad Commission after the decision of this court in the first *Rowan & Nichols* case (310 U. S. 573) does not make the case moot, but merely emphasizes the fact that the decision in the first *Rowan & Nichols* case is controlling on the essential issues in this case.

2. Alleged Distinctions between this Case and the First Rowan & Nichols Case

Humble Oil & Refining Company attempts to avoid the controlling effect of the decision of this court in the first *Rowan & Nichols* case[4] by making certain alleged distinctions between that case and the case now before the court. (Humble's brief, pages 15-29) For the most part, these attempted distinctions resolve themselves into assertions that in the first *Rowan & Nichols* case this court completely misconceived the facts and the law.

As to the alleged misconceptions of the facts in the first *Rowan & Nichols* case (Humble's brief,

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[3]It is interesting to note that while the Humble regards the per well potential orders as being "more drastic" than the September, 1939, and January, 1940, orders (Humble's brief, p. 13) the Rowan & Nichols Oil Company regards the per well potential order as being more favorable than the September and January orders. See Rowan & Nichols Oil Company's brief in No. 218, October Term, 1940, at pages 12-20.

[4]*Railroad Commission of Texas* v. *Rowan & Nichols Oil Company*, 310 U. S. 573.

pages 15-20) we believe that we need do no more than point out that these same arguments were repeatedly and ably presented in the petitions for rehearing in the *Rowan & Nichols* case, and overruled by this court.[5] The court in that case correctly conceived the situation as involving a distribution where about 19,000 low capacity wells received a flat 20-barrel allowable or all they could produce up to that amount, and the remaining 6,000 wells produced on the basis of 2.32% of their hourly potential. The "statutory marginal" wells, then as now, were only about 500 in number, and their production was a very small part of the total allowable. The Commission, then as now, refused to cut better wells below the "marginal allowable" of 20 barrels per well, even though the "marginal well statute" (Article 6049b, Vernon's Texas Civil Statutes) applies specifically only to pumping wells incapable of making more than 20 barrels per day. The result was, as this court said, that the distribution resulted in "a flat per well allowance" to most of the wells in the field, which this court held to be "not an unnatural answer to the problem."[6]

The alleged misconception of the property law of Texas by this court in the *Rowan & Nichols* case (Humble's brief, pages 20-21) is discussed *infra*, pp. 10-15)

We believe that the reading of the references cited

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[5] 61 S. Ct. 66.

[6] See *Railroad Commission of Texas v. Rowan & Nichols Oil Co.*, 310 U. S. 573, 583.

in the Humble's brief, pages 21-25, including the article by Mr. Hardwicke, one of Humble's attorneys, will convince the court more strongly than ever that in truth the lower federal courts have been too ready to interfere with and dictate to the Railroad Commission in its endeavors to work out a satisfactory formula for the East Texas field.

As to the substitution by the District Court of its judgment for that of the Railroad Commission, we need only point out that the temporary injunction of August 11, 1940, fixed an exact figure which the Commission was required to allow to each of the Humble's wells (R. 40) and that in its findings and conclusions after the trial on the merits the District Court measured the Humble's right solely by the standard of whether it was allowed to recover in proportion to its current reserves. (R. 578, 583, 585)

The inaccuracy of calculation of reserves, (Humble's brief, pages 26-27) and the granting of permits to drill on small tracts (Humble's brief, pages 27-28) have already been covered in our original brief. (Appellants' brief, pages 68-69, 61-66)

The alleged undisputed character of the evidence is discussed in the following section of this brief.

3. Nature of the Evidence

With respect to the evidence supporting the Railroad Commission's orders as being reasonably nec-

essary to prevent waste and to protect the correlative rights of all owners in the field, we gave a detailed analysis in our original brief, showing, we believe, that the Commission's orders are reasonable and specifically that the Humble has not been and will not be injured by their application. Apparently the Humble feels that by repeating continually that the evidence was "undisputed" (Humble's brief, pages 29, 40, 46, 53, 57) and that injury to the Humble was "practically admitted," (Humble's brief, pages 16, 46, 48, 96), it can lead the court to accept its assertions as true. An examination of the record will show that on all material points, there were at least serious disputes in the evidence. As to the injury to the Humble, we have already shown in our original brief that certainly there has been no actual injury to the Humble up to the present time (Appellants' brief, pages 38-44) and that as nearly as experts can predict, there will be no injury to the Humble in the future. (Appellants' brief, pages 45-49)

The fact that the District Court's findings and conclusions assert that "there really is little or no dispute in the evidence" (R. 587) does not make the assertion incontestable. The District Court in this case was obviously attempting to bolster its judgment, as were the District Court[7] and the Circuit Court of Appeals[8] in making similar assertions in their opinions in the first *Rowan & Nichols* case.

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[7]See *Rowan & Nichols Oil Co.* v. *Railroad Commission of Texas*, 28 F. Supp. 131, 134, 136

[8]See *Railroad Commission of Texas* v. *Rowan & Nichols Oil Co.*, 107 F. (2d) 70, 72

This court in that case[9], followed the rule laid down in *South Carolina State Highway Department* v. *Barnwell Brothers, Inc.*, 303 U. S. 177, 191, that the court will examine the record, not to see whether the findings of the court below are supported by evidence, but to ascertain upon the whole record whether it is possible to say that the administrative action is without rational basis. Following the same rule in this case, the court will inevitably be led, we submit, to the conclusion that the orders of the Railroad Commission were erroneously stricken down by the three-judge District Court.

4. Property Rights Asserted by the Humble

While the Humble says that it does not insist upon any particular plan of proration (Humble's brief, pages 4, 12) it nevertheless repeatedly asserts that any method of proration will be invalid "unless its (the Humble's) current allowable is substantially in proportion to its percentage of the oil in place in the field." (Humble's brief, p. 47. See also pages 36, 97, 116) And the Humble also makes it plain that it claims that, as a matter of law, it is entitled to produce not merely the amount of oil *originally* in place beneath its leases, but that as each proration order is issued, the Railroad Commission must readjust the allowables to *current* oil in place, and thereby give the Humble the benefit of oil drained to it. (Humble's brief, footnote No. 8, p. 30; p. 43)

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[9]See *Railroad Commission of Texas* v. *Rowan & Nichols Oil Company*, 310 U. S. 573, 593

There is no support in any Texas cases for the Humble's assertions. This court was certainly correct in pointing out in the first *Rowan & Nichols* case[10] that the "rule of capture" is as much a part of the property law of oil and gas in Texas as the rule of ownership in place. This was the explicit holding of the Supreme Court of Texas in *Brown* v. *Humble Oil & Refining Co.*, 126 Tex. 296, 305:

> "Owing to the peculiar characteristics of oil and gas, the foregoing rule of ownership of oil and gas in place should be considered in connection with *the law of capture. This rule gives the right to produce all of the oil and gas that will flow out of the well on one's land; and this is a property right. . .*" (Our emphasis)

In *Brown* v. *Humble Oil & Refining Company, supra,* the court also points out that *both* the rule of ownership in place and the rule of capture "are subject to regulation under the police power of a state."[11]

The effect of regulation is necessarily to change the measure of the amount of oil which can be produced from a lease. Under unregulated flow, the amount of production would be measured principally by the diligence exercised by each operator in drilling and producing wells on his lease as compared with the diligence of surrounding operators. While for certain purposes (such as taxation) the rule

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[10] See *Railroad Commission of Texas* v. *Rowan & Nichols Oil Company*, 310 U. S. 573, 579.

[11] 126 Tex. at p. 305

of property is the rule of ownership in place, the rule of property for *production* is the rule of capture. The only way of determining how much oil a lease would produce under unregulated flow would be to actually produce it, together with all of the other leases in the field, in this way. Obviously, it would be impossible to carry over to regulated production the same standard of measuring production. It would be wholly impossible to guess how much oil would have been produced under unregulated flow, because it would be purely a matter of speculation as to how many wells would have been drilled on each tract, how fast they would have been produced, and what effect such production would have had on surrounding leases.

The effect of regulation in the East Texas field has unquestionably been to increase the total production from the field. (R. 183, 298, 340) The question, therefore, is as to the proper distribution of oil that would have been produced even under unregulated conditions, and also *oil that would not have been produced at all except for the regulations promulgated and enforced by the Railroad Commission.*

The Texas courts have never laid down hard and fast rules for the allocation of production under regulated flow. The farthest that any Texas court has gone is the statement made by the Supreme Court in *Brown* v. *Humble Oil & Refining Co.*, 126 Tex. 296, 312, that the Railroad Commission should adjust the allowables so as to give the owner of a small tract "only his just proportion of the oil and gas" and

that, "By this method, each person will be entitled to recover a quantity of oil and gas substantially equivalent in amount to the recoverable oil and gas under his land."

After the foregoing opinion was announced by the Supreme Court of Texas on June 12, 1935, the Railroad Commission by recitals in its order of August 26, 1935, (Defendants' Exhibit No. 16, offered R. 460, copied R. 554) found that the assumptions which were made by the Supreme Court in its opinion were contrary to the evidence of experts at numerous hearings before the Railroad Commission.

Thereafter, on November 27, 1935, the Supreme Court of Texas, on motion for rehearing, repudiated the suggestions that it had undertaken to prescribe "rules and standards by which to determine property rights and as standards to control the Railroad Commission in promulgating conservation rules and orders relating to oil and gas." (126 Tex. at p. 315) Specifically, it repudiated the suggestion that proration based on acreage was required. It recognized that there are many "factors, facts and circumstances" that must be considered in each case, that "all questions of fact are primarily for the Commission to determine" and that its orders will not be set aside "unless they are clearly illegal, unreasonable, or arbitrary." (126 Tex. at p. 316)

The only other expression in the Texas courts is the recent statement in *Gulf Land Co.* v. *Atlantic Refining Co.*, 134 Tex. 59, 71:

> "It is the law that every owner or lessee of land is entitled to recover the oil and gas in or under his land, or their equivalents in kind."

Nothing in the foregoing decisions indicates that the Railroad Commission must adjust the allowable to be in proportion to current reserves under a lease. It is obvious of course that such a system would be extremely favorable to operators like the Humble whose "leases are situated along a line running in a northerly and southerly direction near the middle of the field; that is to say, in the main, its leases are located in the so-called 'fairway', or that portion of the field where the producing sands have the greatest thickness and the largest quantity of recoverable oil in place."[12] If the Humble and other operators similarly situated can produce currently in proportion to their reserves and also much longer than leases in less favored portions of the field, they obviously will produce much more than their oil in place (R. 295, 352, 353, 354, 399) and therefore much more than they are entitled to produce under any Texas decision.

Since Humble's leases have not been depleted in excess of the oil produced therefrom (See Appellant's brief, pages 38-44), since they will ultimately recover the equivalent of the oil originally in place beneath such leases (See Appellant's brief, pages 45-49), the Railroad Commission has adopted a reasonable method of allocation—one certainly not in

[12]Humble's complaint, R. 3. Statements that Humble's properties are not located mainly in the fairway in the Humble's brief are contrary to its own pleadings and the evidence of all witnesses. Compare the finding of the District Court in the identical language quoted above. R. 577

conflict with any Texas rule of property. Of course, the Railroad Commission retains the power of continuous supervision for relief of any inequalities or injustices that may arise in the future.

5. Extent of Judicial Review under Texas Statutes According to Texas Decisions

The Humble in its brief (pages 74-85) asserts that "the test of whether an order is reasonable under the Texas statute is different from the test of whether it is confiscatory and discriminatory, in violation of the Fourteenth Amendment" and that the burden on the party attacking such an order "is no more than that which exists in an ordinary suit between private persons." From these assertions, it concludes that the findings of the District Court should be upheld "if supported by substantial evidence."

We disagree with Humble both in its assertions as to the Texas law and the effect of such law upon the decision of this case.

Even if it were true (which we deny) that a different test would be applied under the Texas statutes by the Texas courts in determining whether the order is valid, this court has held that it will go no further in passing upon the validity of the order under the Texas statutes than it would go in determining its validity under the Fourteenth Amendment. In the amendment to its opinion filed on October 21, 1940, this court said:

"While the presence of a federal question may also open up state issues, *Siler* v. *Louisville & N. R. R.*, 213 U. S. 175, the claim here founded on Texas law is derived from a statute requiring proration on a 'reasonable basis.' Vernon's Texas Annotated Civil Statutes (1925) Art. 6049c, § 7. The Texas decisions, in so far as they have been brought to our attention, do not make clear whether the local courts may exercise an independent judgment on what is 'reasonable.' Compare *Brown* v. *Humble Oil & Refining Co.*, 126 Tex. 296, 316. But, in any event, as we read the Texas cases, the standard of 'reasonable basis' under the statute opens up the same range of inquiry as the respondent in effect asserted to exist in his claims under the Due Process Clause. These latter claims we have found untenable. *What ought not to be done by the federal courts when the Due Process Clause is invoked ought not to be attempted by these courts under the guise of enforcing a state statute.* Whether the respondent may still have a remedy in the state courts is for the Texas courts to determine, and is not foreclosed by the denial on the grounds we have indicated, of the extraordinary relief of an injunction in the federal courts." (Our emphasis)

It is quite evident that the Humble is trying to induce this court to attempt to do under the guise of enforcing a state statute what it has held that it will not do when the Due Process Clause is invoked. This court has expressly held in the *Rowan & Nichols* case, quoted above, that it will not allow the federal courts to be used for this purpose.

However, we believe that a reading of the Texas

cases makes it plain that an attack upon an order of the Railroad Commission is not an ordinary civil case, and that the burden upon the plaintiff is to show in effect that there is no substantial evidence affording a rational basis for the Railroad Commission's order.

The Texas statute allowing appeals from orders of the Railroad Commission in oil and gas cases, Article 6049c, Section 8, provides:

> "Any interested person affected by the conservation laws of this State relating to crude petroleum oil or natural gas, and the waste thereof, including this Act, or by any rule, regulation or order made or promulgated by the Commisison thereunder, and who may be dissatisfied therewith, shall have the right to file a suit in a Court of competent jurisdiction in Travis County, Texas, and not elsewhere, against the Commission, or the members thereof, as defendants, to test the validity of said laws, rules, regulations or orders. Such suit shall be advanced for trial and be determined as expeditiously as possible and no postponement thereof or continuance shall be granted except for reasons deemed imperative by the Court. In all such trials, the burden of proof shall be upon the party complaining of such laws, rule, regulation or order; and such laws, rule, regulation or order so complained of shall be deemed prima facie valid."

This statute applies to appeals from all orders of the Railroad Commission relating to oil and gas, no

distinction being made between orders granting drilling permits, proration orders, or any other kind of order relating to oil and gas.

The leading case applying to appeals to the courts from oil and gas orders of the Railroad Commission is *Gulf Land Co.* v. *Atlantic Refining Co.*, 134 Tex. 59, 131 S. W. (2d) 73 (1939) containing a very careful analysis of the law by Judge Critz of the Supreme Court. After quoting from Article 6049c, Section 8, Revised Civil Statutes, Judge Critz says:

(134 Tex. at pages 73, 74)

"As already noted, our oil and gas conservation statutes provide an appeal from the Commission to the District Court of Travis County, Texas. The action before us here is such an appeal. In ordinary civil actions the district court, or any other trial court, exercises original jurisdiction to find and determine all fact questions, as well as all law questions. *The action provided by statute for an appeal to a district court of Travis County to review the rules and orders of the Commission is clearly not an ordinary civil action.* To the contrary, it is a special statutory action to enforce a right which exists only by statute, and not under the Constitution or at common law. Alpha Petroleum Co. v. Terrell, 122 Texas 257, 59 S. W. (2d) 364 Id. 372. It is the undoubted intention of the statutes under discussion to clothe the district court with all of its constitutional and statutory jurisdiction in passing on all questions of law which arise in the appeal from the Commission to such court. We encounter no difficulty in reading this conclu-

sion. The duty of defining the jurisdiction of the court to hear and determine fact questions under our oil and gas conservation statutes has given us very grave concern.

". . .

"As already indicated, we hold that the appeal provided by Section 8 of Article 6049c, supra, contemplates that the district court shall exercise its general jurisdiction in determining or deciding all questions of law arising under such action. *We think, however, that, generally speaking, the law contemplates that the Commission shall be left free to finally determine controverted issues of fact. . . .*

". . . . To our minds, the law contemplates that the fact findings made by the Commission in passing upon such applications are subject to review and correction by the courts only to the limited extent hereinafter stated. The court, on appeal from the Commission's order, should not set aside an order of the Commission either granting or refusing to grant a well permit unless such order is illegal, unreasonable, or arbitrary. *In so far as the fact findings upon which the order is based are concerned, the order is not illegal, unreasonable, or arbitrary if it is reasonably supported by substantial evidence.* Stated in another way, *the court does not act as an administrative body to determine whether or not it would have reached the same fact conclusion that the Commission reached, but will consider only whether the action of the Commission in its determination of the facts is reasonably supported by substantial evidence.* 34 Tex. Jur., p. 712, sec. 11, and authorities there cited. To permit the court to substitute its fact findings

on controverted issues of fact in such instances would add nothing of value to the administration of the law or the rule under discussion, but, to the contrary, would destroy all uniformity of Commission administration thereunder. . . . ." (Our emphasis)

Instead of being an "ill considered dictum" as is stated in the Humble brief (footnote No. 22, p. 83), the opinion of the Supreme Court of Texas, quoted above, is its deliberate and careful analysis of a problem which gave it "grave concern," and was evidently intended as a definitive statement upon a point which constantly arises in the Texas courts.

The decision of the Supreme Court of Texas in the *Gulf Land Company* case, supra, is in line with what was said by the same court in *Brown* v. *Humble Oil & Refining Company*, 126 Tex. 296, 83 S. W. (2d) 935, 87 S. W. (2d) 1069:

(126 Tex. at page 316)

". . . All questions of fact are primarily for the Commission to determine.

". . . The duty is lodged with the Railroad Commission to make rules to carry out the mandates of the Legislature, and to impartially enforce them. In the exercise of its power to grant exceptions to its rules, it is the duty of the Commission to treat all interested parties justly, fairly, and impartially under all the facts and circumstances of the case; *and the actions and rulings of the Commission in attempting to ac-*

complish such results will not be disturbed by the courts, unless they are clearly illegal, unreasonable, or arbitrary. All rules and rulings of the Railroad Commission are presumed to be valid until the contrary is made to appear. . . . " (Our emphasis)

It is noteworthy that both of the foregoing cases were decided by the Supreme Court after the decision under the railroad rate statute cited by the Humble, *Railroad Commission of Texas* v. *Houston Chamber of Commerce*, 124 Tex. 375. In view of this fact, it is extremely doubtful if the *Houston Chamber of Commerce* case, which was an opinion of the Commission of Appeals, would now be followed, even in railroad rate cases. At any rate, it is perfectly clear from the more recent decisions of the Supreme Court of Texas that appeals from orders of the Railroad Commission in oil and gas cases are not ordinary civil cases, and that orders of the Railroad Commission in such cases will not be set aside where there is substantial evidence to support them.

A still more recent decision sustaining the same view is *Humble Oil & Refining Co.* v. *Turnbow*, 133 S. W. (2d) 191 (Tex. Civ. App.). In this case, the District Court sustained the order of the Railroad Commission where the record of the hearing before the Railroad Commission showed that it acted upon substantial evidence. Judgment was granted at the close of the plaintiff's evidence, although no testimony was offered except the record of the Railroad Commission's hearing and expert testimony contra-

dicting the evidence heard by the Commission. The Court of Civil Appeals affirmed the judgment of the trial court and the Supreme Court of Texas on January 3, 1940, approved the opinion and judgment of the Court of Civil Appeals by refusing application for writ of error. Humble then filed with this court a petition for certiorari, *mainly on the ground that it had been denied an independent determination of the facts by the Texas courts* and therefore had been denied due process under the Fourteenth Amendment. This court denied petition for certiorari on October 14, 1940. *Humble Oil & Refining Co.* v. *Turnbow*, 61 S. Ct. 10.

The settled Texas law is correctly stated by Judge Hutcheson in *Gulf Land Co.* v. *Atlantic Refining Co.*, 113 F. (2d) 902, 904 (5th Cir., 1940) as follows:

> ". . . Under the settled law of Texas as carefully laid down in Gulf Land Co. v. Atlantic Refining Co., 134 Tex. 59, 131 S. W. (2d) 73, and in later cases citing it, it is beyond question that the commission is primarily charged with the duty of, and vested with a wide discretion in, determining whether a permit should be granted. *It is equally beyond question that in the special statutory action, to set the order aside, provided by Article 6049c, unless it appears that its finding and order is unsupported by substantial evidence, the order must stand.* For the court may not substitute its judgment or opin-

ion for that of the commission. . . " (Our emphasis)[13]

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[13]Under similar statutes, the Texas courts have laid down substantially the same rule in the following instances:

Permits under Motor Carrier Laws:

Shupee v. *Railroad Commission of Texas*, 123 Tex. 521, 73 S. W. (2d) 505:

(73 S. W. (2d) at page 508)

"We think it clear that the intention of the statutory provisions is that the decisions of the Railroad Commission upon the granting or refusing of any permit to operate a bus line over any highways in Texas should be final and conclusive, unless it acted unreasonably and unlawfully, or unless its decisions had no basis in fact and were arbitrary or capricious. *In other words, if the findings and orders of the Railroad Commission in such matters had any reasonable basis in fact, and were not shown to be arbitrary and unreasonable, they must be supported by the court.* The court cannot substitute its judgment for that of the commission, unless it be shown that said judgment of the commission was without foundation in fact, or was unreasonable or arbitrary. . . ." (Our emphasis).

Rate Orders for Gas Utilities:

United Gas Public Service Co. v. *State*, 89 S. W. (2d) 1094, 1102 (Tex. Civ. App.):

" . . . That the complaining party attacking a rate as being unreasonable and unjust must allege facts which, if proved, would show the rate to be unjust and unreasonable as a matter of law, and to prove by clear and satisfactory evidence *'which leaves no reasonable doubt in the judicial mind that the rate or rule is unjust and unreasonable.'* R. R. Comm. v. Galveston Chamber of Commerce, 105 Tex. 101, 145 S. W. 573, 580; R. R. Comm. v. Weld & Neville, 96 Tex. 394, 409, 73 S. W. 529." (Our emphasis)

The opinion of the Court of Civil Appeals was approved by the Supreme Court of Texas, which refused writ of error. This court on appeal affirmed the judgment of the Court of Civil Appeals. *United Gas Public Service Co.* v. *Texas*, 303 U. S. 123.

Permits under Liquor Laws:

Texas Liquor Control Board v. *Lanza*, 129 S. W. (2d) 1153, 1154, (Tex. Civ. App.; application for writ of error dismissed by Texas Supreme Court with notation, "Correct Judgment.")

" . . . The settled rule, stated conversely, is that, orders or findings of fact of a regulatory body or commission, are not reviewable on appeal unless they are unsupported by evidence; Humble Oil & Refining Co. v. Railroad Commission, et al., Tex. Civ. App., 112 S. W. 2d 222. . . . "

CONCLUSION

For the reasons stated, it is respectfully prayed that the judgment of the three-judge District Court be reversed.

GERALD C. MANN
Attorney General of Texas

EDGAR W. CALE

TOM D. ROWELL, JR.

E. R. SIMMONS

JAMES P. HART
Assistant Attorneys General

Attorneys for Appellants
Austin, Texas

ACKNOWLEDGMENT OF SERVICE OF REPLY BRIEF

Service of the foregoing reply brief is acknowledged this .....day of December, 1940.

Attorney for Appellee,
Humble Oil & Refining Company

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CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

NO. [redacted] 57

RAILROAD COMMISSION OF TEXAS, ET AL.,
Appellants

v.

HUMBLE OIL & REFINING COMPANY,
Appellee

MOTION TO ADVANCE AND FOR EXTENSION OF STAY PENDING APPEAL

On Appeal from the District Court of the United States for the Western District of Texas

FIRM FOUNDATION - AUSTIN

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

NO.....

RAILROAD COMMISSION OF TEXAS, ET AL.,
Appellants

v.

HUMBLE OIL & REFINING COMPANY,
Appellee

MOTION TO ADVANCE AND FOR EXTENSION OF STAY PENDING APPEAL

To the Honorable Supreme Court of the United States:

Now come the appellants, the Railroad Commission of Texas, and Lon A. Smith, Ernest O. Thompson, and G. A. Sadler, Members of the Railroad Commission of Texas, and Gerald C. Mann, Attorney General of Texas, in their official and individual capacities, and say:

I.

This case involves the constitutionality under the 14th Amendment to the Constitution of the United States of certain proration orders issued by the Railroad Commission of Texas limiting and apportion-

ing the allowable production of oil from the East Texas oil field. The orders attacked by the appellee and enjoined by the three-judge District Court below affect the entire East Texas oil field, which contains approximately 133,000 acres of productive area and over 25,000 producing oil wells. Because of the large production from the East Texas oil field, the final determination of the validity of the proration orders involved in this case is of extreme importance, not only to the persons directly affected in the East Texas oil field, but also to the State of Texas and to the oil industry generally. An early hearing of this case will avoid much uncertainty and confusion which will exist until it is finally determined by the decision of this court whether or not such proration orders are valid. This appeal involves similar issues to case No. 681, *Railroad Commission of Texas, et al.* v. *Rowan & Nichols Oil Company*, now pending in this Court.

II.

The enforcement and execution of the final injunction issued by the three-judge District Court should be stayed pending the hearing and final determination of this case by this Honorable Court. On February 21, 1940, the said three-judge District Court announced that it would enter its judgment in favor of the appellee, enjoining the enforcement of the proration orders attacked, and gave the appellants ten days in which to decide whether or not this action would be appealed. On March 1, 1940, the appel-

lants notified the said three-judge District Court that they would appeal this case, and at the same time filed their motion for a stay of judgment pending the appeal. A copy of this motion is attached hereto, marked "Exhibit A," (page 8, *infra*) and it is prayed that such motion be considered a part hereof. On March 14, 1940, a hearing was held before Circuit Judge Samuel H. Sibley and District Judge Robert J. McMillan, on said motion for a stay, and it was then decided by said judges, that, because of the public importance of the questions involved and the serious effect of enforcing the injunction prior to a final determination of this case by this Honorable Court, a stay of the injunction pending the appeal should be granted. It was then decided that the stay should be granted for a period of sixty days, within which time it was anticipated that this Honorable Court could hear and determine this case, it then being conceded that if this case could not be determined within such time, this Honorable Court would have power to extend the stay until the appeal was finally determined. Thereafter, on March 19, 1940, the final judgment in this case was entered by the three-judge District Court, granting to the appellee a permanent injunction but staying the enforcement and execution of the injunction for a period of sixty days from the date of the judgment. A copy of the judgment is attached hereto and is marked "Exhibit B" (*infra*, page 17)

III.

The stay which was granted by the three-judge

District Court should be extended by this Honorable Court until such time as this case can be heard and decided by this Honorable Court, in order that serious and irreparable injury may not be done to the appellants and to the East Texas oil field and the oil industry of the State of Texas as a whole. It appears to be doubtful whether or not this case can be finally determined by this Honorable Court within sixty days after March 19, 1940, the date of the final judgment of the District Court. The effect of the enforcement and execution of the injunction granted by the three-judge District Court, restraining the enforcement of the proration orders of the Railroad Commission of Texas, would be to destroy the *status quo* by permitting the appellant, Humble Oil & Refining Company, to produce oil from its 2,547 wells without the regulations and restrictions imposed upon other operators. Such other operators in the East Texas field will be placed in the position of either having to permit their properties to be drained, or of disregarding the orders of the Railroad Commission or seeking to have them set aside by Court injunction. Much litigation and great confusion and inequality can be prevented if the stay granted by the District Court is extended until this Honorable Court finally passes upon the validity of the proration orders.

IV.

The appellee will not suffer any irreparable injury from a continuation of the present method of proration pending this appeal. On November 10, 1939, a

hree-judge District Court, composed of Circuit Judge Foster and District Judges Kennerly and Atvell refused an interlocutory injunction to the plaintiff on the ground that it was not shown that irreparable injury would be done to the plaintiff pending a hearing on the merits. In its judgment entered on March 19, 1940, the three-judge District Court which entered the final judgment below granted a stay of the injunction for a period of sixty days. The rate of withdrawal from the East Texas field under the present method of proration is comparatively low and the appellee is producing under the present order of the Railroad Commission a larger percentage of the field allowable that it produced for over six years prior to the filing of this action. Any damage or injury which may result to the appellee as a result of the stay of the judgment will be greatly outweighed by the injury which will be done to the appellants and to the operators in the East Texas field and to the oil industry in the State of Texas as a whole by reason of the confusion, uncertainty and inequality which would result if the stay is not extended. Appellants have prosecuted this appeal with diligence and will continue to use diligence to obtain an early hearing and decision on this case. The extension of the stay granted by the three-judge District Court is asked not for delay but in order that justice may be done.

WHEREFORE, appellants respectfully pray:

(1) That this case be advanced for argument and hearing.

(2) That the enforcement and execution of the permanent injunction issued by the three-judge District Court below be stayed until the final determination of this case by this Honorable Court.

(3) For such other and further relief as shall be just and proper in the premises.

Respectfully submitted,
GERALD C. MANN
Attorney General of Texas

W. F. MOORE
First Assistant Attorney General

JAMES P. HART
Assistant Attorney General

THE STATE OF TEXAS
COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, on this day personally appeared F. V. L. Patten, who, being duly sworn, upon his oath deposes and says:

My name is F. V. L. Patten. I am Director of Production of the Oil & Gas Division of the Railroad Commission of Texas. I have read the foregoing motion to advance and for an extension of stay pend-

ing appeal, and I am cognizant of the facts therein stated. The facts alleged in said motion are true and correct.

F. V. L. PATTEN

Subscribed and sworn to before me, the undersigned authority, this ..... day of April, 1940.

Notary Public, Travis County, Texas

"EXHIBIT A"

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION

HUMBLE OIL & REFINING COMPANY,
Plaintiff

v.

RAILROAD COMMISSION OF TEXAS, ET AL., Defendants

CIVIL ACTION NO. 31

MOTION FOR STAY OF JUDGMENT

To said Honorable Court:

Come now the defendants, the Railroad Commission of Texas and Lon A. Smith, Ernest O. Thompson and Jerry Sadler, the Members of the Railroad Commission of Texas, and Gerald C. Mann, Attorney General of Texas, in their official and individual capacities, and respectfully move the court to grant a stay of its judgment, and as grounds for this motion, defendants say:

I.

This court on February 21, 1940, announced its decision to enter a judgment granting to the plaintiff, Humble Oil & Refining Company, a final injunction restraining the defendants from enforcing or attempting to enforce the proration orders of the Railroad Commission of Texas attacked in this action by the plaintiff, or any similar orders substantially the same as the orders attacked by the plaintiff in its supplemental complaint. Defendants desire to prosecute an appeal from such judgment to the Supreme Court of the United States. Defendants say that in equity and good conscience the injunction of the court should be stayed pending a reasonable time within which the defendants may perfect their appeal to the Supreme Court of the United States, and pending the final determination of such appeal, for the following reasons:

(1) A stay of the judgment of the court should be granted in order that defendants' right of appeal may not be rendered practically ineffective and in order that serious and irreparable injury may not be done to the defendants and to the East Texas oil field and the oil industry of the State of Texas as a whole.

(2) The effect of the judgment of the court, granting an injunction against the enforcement of the proration orders of the Railroad Commission of Texas for the East Texas field, will be to destroy and not to preserve the status quo. Even if the court restricts the production of the Humble Oil & Refin-

ing Company to a production from its leases of about twenty-five or thirty per cent more than it is permitted to produce under the present orders of the Railroad Commission, the result will be to add approximately 25,000 barrels to the daily production from the East Texas field, and there will be an inequality of production between the Humble Oil & Refining Company and leases located adjacent to the properties of Humble Oil Refining Company and with other properties similarly situated. By granting a stay of said judgment and by suspending the operation and execution of the injunction, pending an appeal, this court will preserve the status quo until the validity of the proration orders of the Railroad Commission can be finally determined by the Supreme Court of the United States.

(3) Said judgment should be stayed because a state of great inequity, uncertainty and confusion in the East Texas oil field will be prevented by staying said judgment. While the court does not hold the proration order invalid except as to the plaintiff in this case, it is evident that if the court's judgment is finally affirmed, there must be a complete revision of the proration orders of the Railroad Commission applicable to the East Texas oil field. The property rights of the owners and operators in the East Texas field will be uncertain until a final determination of this cause by the Supreme Court of the United States can be obtained. Unless a stay is granted, a situation of inequality between the Humble Oil & Refining Company and other operators, whose properties are adjacent to the properties of Humble Oil &

Refining Company, or whose properties are similarly situated, will be created, by reason of the fact that the Humble Oil & Refining Company will be allowed to produce a larger proportionate share of the allowable production from the field than others similarly situated. Such operators will be faced with the alternative of complying with the orders of the Railroad Commission and receiving a smaller proportionate share of the total field allowable than the Humble Oil & Refining Company and having their properties drained by plaintiff, or of filing suit against the Railroad Commission to enjoin the enforcement of the proration orders of the Railroad Commission and having the District Court fix the amount of oil which such operators can produce. Since the court is obviously without power to promulgate a general proration order applicable to the East Texas field, and since each of such suits must be determined upon the particular facts in such suit, it will inevitably result that there will be much confusion and great inequality among the various operators in the East Texas field. Such inequality, confusion and uncertainty can be prevented if a stay is granted so that all operators will continue to receive the amounts allowed by the present proration order until the validity of such order can be finally determined by the Supreme Court by the United States. After the appeal is finally determined by the Supreme Court of the United States, the Railroad Commission will then be able to formulate and promulgate an order which will comply with the law as finally settled by that court and which will be equally applicable to all operators within the field.

(4) The plaintiff will not suffer any irreparable injury from a continuation of the present method of proration pending this appeal. On November 10, 1939, a three-judge court, composed of Judge Foster, Judge Kennerley, and Judge Atwell, refused a temporary injunction to the plaintiff on the ground that it was not shown that irreparable injury would be done to the plaintiff pending a hearing on the merits. An appeal to the Supreme Court of the United States would be prosecuted promptly and with expedition by the defendants, and the defendants would make motion to advance such appeal, and a final determination of this case by the Supreme Court of the United States could probably be obtained within a period of three or four months. The evidence in this case shows that according to the estimates of its own engineers, the depletion of the Humble Oil & Refining Company's leases amounts to approximately the same amount as has been produced from its leases, and in a large percentage of its leases, it still has in place exactly as much oil as was originally in place beneath such leases. The rate of withdrawal from the East Texas field under the present method of proration is comparatively slow, and the plaintiff will suffer very little drainage, if any, from any of the surrounding tracts during the time which will elapse before a final determination before the Supreme Court of the United States can be obtained.

(5) Any damage or injury which may result to the plaintiff as a result of the stay of the judgment entered by the court in this case will be greatly outweighed by the injury which will be done to

the defendants and to operators in the East Texas field, and to the oil industry in the State of Texas as a whole, by reason of the confusion, uncertainty and inequality which will be caused if plaintiff is allowed to produce a greater proportion of oil, during the pendency of this appeal, than the remaining operators in the East Texas field. If a stay of the court's judgment is granted, it will be unnecessary for other operators in the East Texas oil field to file suits in order to protect their leases from drainage. If a stay is refused however a great number of lawsuits will inevitably be filed by persons similarly situated to the Humble Oil & Refining Company. Such lawsuits will necessarily be very complicated and very expensive to the Railroad Commission of Texas and will require a large expenditure of public funds in the defense of such cases. Such multiplicity of suits can be prevented by staying the judgment of this court pending appeal. More important however than such expense and the direct effect upon the defendants, is the effect of such refusal to grant a stay upon the other operators in the East Texas field and the oil industry in the State of Texas and throughout the nation. The effect of prorating the field by court injunction will be not only to create a state of confusion and inequality, but also to greatly increase the total production from the East Texas field, to the point where there will probably be a large amount of physical waste of oil and gas. In effect, all efforts to regulate and prorate production of oil from the East Texas field will be suspended pending the appeal, unless a stay of the court's judgment is granted.

The Railroad Commission has received information which causes it to believe that if this stay is not granted there will be immediately a number of suits filed which will involve a large percentage of the producing acreage in the East Texas oil field.

(6) Unless a stay is granted, there will be no method whereby the parties can be restored to their present position in the event the judgment of the trial court is reversed by the Supreme Court of the United States. If the Humble Oil & Refining Company is permitted to produce oil in excess of its present allowables pending an appeal, in the event the judgment of this court is reversed there will be no method of restoring to the adjoining land owners the oil which the Humble Oil & Refining Company will drain from underneath their tract by reason of their increased allowable. Nor will there be any method whereby the Railroad Commission can require the Humble Oil & Refining Company to reduce its future allowable so as to account for the excess oil which it will have produced pending appeal, and the judgment of the Supreme Court of the United States will to such extent be rendered ineffective.

II.

Defendants say that they have no personal interest in the case, but that they are prosecuting the same in order to have a final determination of the validity of the method of proration involved in the orders of the Railroad Commission of Texas under attack in

this State. Defendants have no method under the laws of the State of Texas whereby they can make a supersedeas bond, in their official capacity as Members of the Railroad Commission of Texas, or as Attorney General of Texas. Defendants say it would be impossible for them individually to make a bond and that it would be unjust to require them to submit to personal liability as a condition of obtaining a stay of the judgment, where, in effect, the appeal can be effective only if the stay is granted.

WHEREFORE, defendants pray that this court stay the operation and execution of the permanent injunction against the enforcement of the proration orders of the Railroad Commission of Texas as applicable to the East Texas oil field, during a reasonable time in which defendants may perfect their appeal to the Supreme Court of the United States, and pending a final determination of such appeal by said court, that no bond be required of defendants as a condition for such stay, and for such other relief as may be proper in the premises.

Respectfully submitted,

GERALD C. MANN
Attorney General of Texas

JAMES P. HART
Assistant Attorney General

E. R. SIMMONS
Assistant Attorney General

EDGAR CALE
Assistant Attorney General

TOM D. ROWELL, JR.
Assistant Attorney General

Attorneys for Defendants
Austin, Texas

THE STATE OF TEXAS
COUNTY OF TRAVIS

Before me, the undersigned authority, on this day personally appeared F. V. L. Patten, who being duly sworn upon his oath deposes and says that he is an employee of the Railroad Commission of Texas, being Director of Production in the Oil and Gas Division, that he is duly authorized to make this affidavit, that he is familiar with the facts stated in the foregoing motion, and that the facts therein stated are true.

F. V. L. PATTEN

Subscribed and sworn to before me this 1st day of March, A. D. 1940.

(SEAL) ADA MAY MADDOX
Notary Public, Travis County, Texas

"EXHIBIT B"

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION

HUMBLE OIL & REFINING COMPANY,
Plaintiff

v.

RAILROAD COMMISSION OF TEXAS ET AL.,
Defendants

CIVIL ACTION NO. 31

FINAL JUDGMENT

This action having been heard twice heretofore before statutory three-judge courts duly assembled on motions for preliminary injunctions, came on to be tried on its merits on February 13 to 16, 1940, before a statutory court of three judges, consisting of Sibley, Circuit Judge, and McMillan and Allred, District Judges, and came the plaintiff, Humble Oil & Refining Company, by its attorneys of record and announced ready for trial, and came the defendants, the Railroad Commission of Texas, Lon A. Smith, Ernest O. Thompson and G. A. Sadler, members of said Commission, and Gerald C. Mann, Attorney General of Texas, in their official and individual capacities, by their attorneys of record and announced ready for trial, and it appearing that proper notice of this motion has been given to the Governor and Attorney General of Texas as required by law,

and that the Court has jurisdiction of the parties and subject-matter involved in this action, and the Court, having heard the pleadings of the parties, the evidence and argument of counsel, and being fully advised, is of the opinion that the law and the facts are with the plaintiff, and that the orders and schedules of the Railroad Commission of Texas for the East Texas field complained of in this action are unreasonable and void as to plaintiff, and deprive plaintiff of its property contrary to the statutes of the State of Texas and in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, and inflict upon plaintiff daily and currently irreparable injury for which plaintiff has no adequate remedy at law; and the Court being of the further opinion that plaintiff will hereafter daily and currently suffer irreparable injury for which it has no adequate remedy at law, all contrary to the statutes of Texas and the Fourteenth Amendment as aforesaid, if orders which are the same or substantially the same as the orders complained of are enforced against plaintiff's properties and wells in the East Texas field; and the Court having afforded to the defendant, Railroad Commission of Texas, a period of ten days in which to decide whether it would write a new and valid order and schedules for said field or would appeal this action, and having been advised by said Commission that it would appeal and that it will not write an order and schedules for said field differing in any material respects from the orders and schedules complained of; and the Court being of the opinion that a permanent injunction should

issue against the defendants as set out below;

It is, therefore, ORDERED, ADJUDGED AND DECREED that the Railroad Commission of Texas, Lon A. Smith, Ernest O. Thompson, and G. A. Sadler, members of said Commission, and Gerald C. Mann, Attorney General of Texas, in their official and individual capacities, their successors, representatives, agents, servants, attorneys, and employes be, and they are each and all hereby permanently enjoined from enforcing or attempting to enforce against plaintiff the proration orders promulgated by the Railroad Commission of Texas on September 11 and September 29, 1939, and January 24, 1940, and the schedules issued in connection therewith, for the East Texas field, as well as any and all other proration orders, rules, regulations and schedules which have been or may be promulgated by the Railroad Commission of Texas for the East Texas field which are the same or substantially the same, or similar to, or have substantially the same effect as, said orders and schedules, or which attempt to prorate the production among properties in the East Texas field on a basis which is the same or substantially the same as the basis applied in said orders and schedules.

It is further ORDERED, ADJUDGED AND DECREED that the defendants and each of them, their successors, representatives, agents, servants, attorneys and employees, are hereby permanently enjoined from denying to plaintiff tenders to move, or from interfering in any way with the transporta-

tion and marketing of, the oil produced or to be produced in accordance with this judgment, and from suing for or from attempting otherwise to claim or collect penalties or to enforce forfeitures or in any other manner to penalize the oil or plaintiff, on account of the oil produced or to be produced in accordance with this judgment.

It is further ORDERED, ADJUDGED AND DECREED that the defendants and each of them, their successors, representatives, agents, servants, attorneys and employees, are hereby permanently enjoined from suing for or from attempting otherwise to claim or collect penalties from plaintiff or to seek to enforce forfeitures against plaintiff or from attempting in any other manner to penalize plaintiff on account of oil which plaintiff may have produced under the provisions of the prelimfnary injunction heretofore granted on August 11, 1939 in this action.

It is further ORDERED, ADJUDGED AND DECREED that all costs in this action are taxed against the defendants, except the costs incurred in connection with plaintiff's second motion for a preliminary injunction, which latter costs are taxed against plaintiff.

The defendants having announced that they would appeal from the judgment in this action, and the court being of the opinion that the injunction should be stayed for a reasonable length of time within which the appeal can be perfected and prosecuted, it is further ORDERED, ADJUDGED AND DE-

CREED that the enforcement of the injunction herein granted is stayed for a period of sixty (60) days from the date hereof.

The Clerk is directed to enter this judgment.

To all of the foregoing judgment, except that portion staying the injunction as above provided, the defendants in open court duly excepted.

DONE at Houston, Texas, this the 19th day of March, A. D. 1940.

SAM'L H. SIBLEY
Circuit Judge

ROBERT J. MCMILLAN
District Judge

JAMES V. ALLRED
District Judge

Approved as to form:
REX G. BAKER

ACKNOWLEDGEMENT OF SERVICE OF MOTION

Service of the foregoing motion is acknowledged by the undersigned attorney for the appellee, Humble Oil & Refining Company, this .... day of April, 1940.

Attorney for Appellee,
Humble Oil & Refining Company,
....., Texas

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IN THE

Supreme Court of the United States

October Term, 1939

No. [redacted] 57

RAILROAD COMMISSION OF TEXAS, ET AL., *Appellants,*

v.

HUMBLE OIL & REFINING COMPANY, *Appellee.*

APPELLEE'S REPLY TO APPELLANTS' MOTION TO ADVANCE AND FOR EXTENSION OF STAY PENDING APPEAL

REX G. BAKER,
R. E. HARDWICKE,
J. A. RAUHUT,
Attorneys for the Appellee.

Of Counsel:
E. E. TOWNES,
R. E. SEAGLER.

YOUNG CO., HOUSTON

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IN THE

Supreme Court of the United States

October Term, 1939

No.....

RAILROAD COMMISSION OF TEXAS, ET AL., *Appellants*,

v.

HUMBLE OIL & REFINING COMPANY, *Appellee.*

APPELLEE'S REPLY TO APPELLANTS' MOTION TO ADVANCE AND FOR EXTENSION OF STAY PENDING APPEAL

To the Honorable Supreme Court of the United States:

Now comes appellee, Humble Oil & Refining Company, and respectfully says:

I.

Appellee does not contest appellants' request that this action be advanced for argument and hearing, and hereby joins in such request, with the proviso that a reasonable opportunity be afforded to the appellee to file its written brief.

II.

This action is here on appeal from a final judgment

of a statutory three-judge court finding the plan of proration of the Railroad Commission of Texas in vogue in the East Texas Oil Field to be unreasonable, discriminatory, confiscatory and void as to appellee and to be violative of its rights under the due process and equal protection clauses of the 14th Amendment, and permanently enjoining appellants from enforcing such plan of proration against appellee. There was a delay of about thirty days after the court announced its decision before the final judgment was entered. Upon entering the final judgment the court granted a stay of enforcement of the injunction for sixty days thereafter.

Appellee respectfully shows that no further stay should be granted, and that the portion of appellants' motion asking for further stay should be denied or dismissed for the following reasons:

1. The motion for extension of the stay is insufficient and does not offer to do equity because it does not suggest or offer any method by which appellee's rights may be protected during the stay.

2. The allegations upon which appellants base their motion for extension of the stay are highly speculative and conjectural at best. They are at most mere conclusions of the pleader with no facts shown to support them. Appellee specifically denies: that appellants will suffer any injury if a stay is denied; that a further stay is necessary in order to prevent serious and irreparable injury to the East Texas Oil Field; that appellee will not suffer any irreparable injury from a continuation of the present method of

prorating the East Texas Field pending this appeal; that the damage and injury which will result to appellee as a result of a further stay will be greatly outweighed by the injury which will be done to appellants and to other operators in the East Texas Field and to the oil industry in the State of Texas as a whole if the stay is not extended; and that a stay is necessary in order to prevent inequality between operators in the field.

3. Appellant, the Railroad Commission of Texas, is a public administrative agency and the other appellants are public officials of the State of Texas. They will not suffer any injury whatsoever by enforcement of the judgment. Appellee has never sought and does not now seek to produce more than its fair share of the oil currently produced from the field. If the stay is denied appellee will not produce in excess of that amount. No one can suffer as a result of the production by appellee of its fair share.

4. The trial court has found that the orders complained of are unreasonable, confiscatory and void as to appellee; that they daily cause large and irreparable injury to appellee; and that appellee has no adequate remedy at law. Consequently, appellee will suffer great and irreparable injury if a further stay be granted. In support of the statements just made, the record not yet being printed, appellee attaches hereto as Exhibit "A" a true copy of the Findings of Fact and Conclusions of Law filed by the three-judge trial court. Briefly, among other things, the Findings show that the orders attacked fixed a top

field allowable of 691,000 barrels of oil for each producing day; that 509,000 barrels, or approximately 75 per cent of the whole, is arbitrarily distributed on the basis of 20 barrels per well per day to each well in the field capable of producing that amount; that less than 1 per cent of the field allowable is allocated to the so-called marginal wells, incapable of producing 20 barrels per day; that about 176,000 barrels per day, or about 25 per cent of the field allowable, is allocated among all except marginal wells in the field on a formula which considers potential, bottom hole pressure, sand thickness and acreage, the amount allocated to each well under the formula being in addition to the flat 20 barrels per well. (Findings of Fact, paragraphs 18 and 19, pp. 25 to 27 hereof.) The court below expressly found that appellee owns at least 14.3 per cent of the recoverable oil reserves in the field, but is allowed under the proration orders to produce only 11.17 per cent of the scheduled allowable and only 11.11 per cent of the current actual allowable; that appellee is being currently deprived of an opportunity to produce 3.13 per cent of the current scheduled allowable or 3.19 per cent of the current actual allowable, this being 29 per cent of the allowable appellee is permitted to produce (Findings of Fact, paragraph 21, pages 27, 28 hereof); that the confiscation and discrimination complained of result almost entirely from the use of the 20 barrel minimum, and no good reason is shown why such minimum is necessary, and if the entire field allowable were apportioned according to the formula in the proration

orders, with no per well minimum, appellee's properties would be permitted currently to produce slightly in excess of 14.3 per cent of the current field allowable (Findings of Fact, paragraph 22 (a), page 28 hereof); that the arbitrary allocation of approximately 75 per cent of the field allowable on a flat 20 barrel per well basis bears no relation to the prevention of physical waste, and is not justified by the necessities of the case (Findings of Fact, paragraph 24, page 31 hereof); that appellee has drilled enough wells on its leases to recover efficiently, without waste, the recoverable oil on its leases, and to produce its proper share of the allowable; that the per well method of distribution tends to cause waste, as a result of concentrated withdrawals in areas of dense drilling (Findings of Fact, paragraph 25, pages 31, 32 hereof; that plaintiff has repeatedly and diligently sought administrative relief (Findings of Fact, paragraph 28, page 33 hereof); that the present proration method results "in the taking of plaintiff's property and giving it to others without any compensation and without any reasonable necessity," and "plaintiff is deprived of a reasonable opportunity to produce currently a very substantial quantity of oil which it would be entitled to produce under a proper method of regulation"; that the "loss to plaintiff under such a program amounts to a very large figure daily" (Findings of Fact, paragraph 29, pages 33, 34 hereof); that the present plan of proration enforced by the Commission does not distribute the allowable on a reasonable basis, and "is arbitrary, discrimin-

atory, confiscatory, and unreasonable as applied to plaintiff" and "denies to plaintiff a reasonable opportunity to recover its fair share of the oil ultimately, much less within a reasonable time, resulting in a daily loss of many thousands of barrels of oil worth many thousands of dollars." (Findings of Fact, paragraph 30, page 34 hereof.) The court below further found, "there is nothing in the orders or program of the Commission which even suggests that the losses already incurred by plaintiff, and to be incurred by the present program, can or will be offset by increasing the allowable of the plaintiff in the future in order to make up for any losses which have occurred or may hereafter occur." (Findings of Fact, paragraph 29, pages 33, 34 hereof.)

The trial court concluded "plaintiff is currently suffering an immediate and irreparable injury * * * and, so long as such program is maintained in force and effect, it will continue to suffer irreparable injury, unless the defendants are enjoined * * *"; that plaintiff is without an adequate remedy at law (Conclusions of Law, paragraph 9, page 37 hereof); that "the record shows virtually no dispute as to the facts." (Conclusions of Law, paragraph 12, page 39 hereof.)

The above findings that plaintiff is daily suffering great and irreparable injury under the present order and has no adequate remedy at law, made by the three-judge court after trial on the merits, should outweigh appellants' representation to the court that the contrary is true; particularly in view of the state-

ment by the court that there was virtually no dispute as to the facts.

5. Discrimination has been created by the Commission's order, and, therefore, a further stay of the judgment would continue the existing inequity; whereas, enforcement of the judgment would correct great inequity as to appellee according to the trial court's express findings. The judgment does not create inequities as to other operators. The vice is in the order enjoined. No inequity to others can result from permitting appellee to produce what it has shown in a trial on the merits to be its fair share. Only the Railroad Commission has the power to rewrite its order so as to eliminate the inequities, if any there be, as to other operators. The judgment in this action can correct inequity only as to the immediate parties. The Railroad Commission's refusal to eliminate inequities, if any there be as to others, is no basis for denying to appellee immediate relief from the discrimination and confiscation it is suffering. The fact that there may be others suffering inequities who have not seen fit, as appellee has done, to protect themselves by proper legal action, should be no excuse for denying to appellee relief which it has clearly shown itself entitled to receive. Furthermore, since the Railroad Commission has the power in its own hands to cure inequities, if any there be as to others, there can be no reason for further stay as to appellee. Whether the judgment is or is not stayed, a large number of other operators who, under the trial court's findings, are being favored by the present

plan of proration, will continue to receive more than their fair share during the appeal; but a further stay would give them a greater advantage over appellee than they would have if the stay is not extended.

The possibility that there may be other operators who are injured by the Commission's orders and that they may seek injunctions against enforcement of the orders as to them does not furnish sufficient reason for extending the stay. The assumption that they will file suit is wholly speculative. Only two other operators have filed suit, although the orders complained of have been in effect since September 11, 1939. At all events, the appellants are not in position to complain of such inequities, because, if they exist, they have been created by the Railroad Commission; and the Commission has the power, even if the extension of the stay be denied, voluntarily to correct discriminations as to others. However, since the appellants admit that such inequities exist, no good reason is perceived why injured persons should not seek relief against orders which are admittedly discriminatory, whether the stay is granted or not.

6. If the stay is extended appellee will suffer irreparable injury to the extent of many thousands of dollars daily. Appellants suggest no way to protect appellee against such losses. There is a way open to appellants whereby appellee and all other operators in the field similarly situated can be protected against discrimination and confiscation pending the appeal without rendering the appeal moot. This action involving matters of public concern, the Rail-

road Commission has it within its power to issue a temporary order pending appeal of this action providing a method of allocation which will afford to appellee and all other operators similarly situated an opportunity currently to recover their fair share of the oil. The trial court has found "that without using the per well minimum, the factors employed can be given such values in a formula that a reasonable method of distribution can be effected." (Findings of Fact, paragraph 22 (a), page 28 hereof.) The factors referred to were potential, pressures, sand thickness and acreage. Such a temporary order would eliminate such inequities as may exist, remove the alleged threats of serious injury to the field and the oil industry as a whole, and do away with the alleged uncertainty and confusion and the alleged threat of a multiplicity of suits. The writing of such a temporary order lies within the exclusive power of the Railroad Commission. It has in its hands the only means of completely eliminating all possibility of inequities pending appeal. The mere fact that the Railroad Commission is unwilling to do away with such discriminations and confiscation of its own accord pending the appeal does not furnish ground for a further stay.

7. Since the granting of a further stay is not necessary in order to preserve the subject matter involved in this action, or to protect defendants from irreparable injury, but since a further stay would cause irreparable injury to appellee, as is shown above, it

is clear that the balance of convenience is in favor of appellee.

8. The trial court refused to grant a stay exceeding sixty days in duration.

III.

Appellee has diligently cooperated with appellants in perfecting their appeal, and will continue to cooperate diligently in obtaining an early disposition of this action.

WHEREFORE, appellee joins in appellants' prayer that this action be advanced for argument and hearing, but respectfully prays that the enforcement of the judgment below be not further stayed, that Appellants' Motion for Extension of Stay pending appeal be dismissed, and for such further relief as may be just and proper.

Respectfully submitted.

Rex G. Baker

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Acknowledgment of Service of Reply.

Service of the forgoing reply is acknowledged by the undersigned attorney for the appellants, this .....day of April, A. D. 1940.

.....

Attorney for the Appellants.

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EXHIBIT A

IN THE

DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

CIVIL ACTION No. 31

HUMBLE OIL & REFINING COMPANY, *Plaintiff*,
v.
RAILROAD COMMISSION OF TEXAS ET AL., *Defendants*.

Findings of Fact and Conclusions of Law.

As required by Rule 52(a) of the Federal Rules of Civil Procedure, the court of three judges (consisting of Sibley, Circuit Judge, and McMillan and Allred, District Judges) makes the following as its findings of fact and conclusions of law in the above numbered and entitled action, and the court directs that the Clerk of this court file such findings and conclusions as part of the record in this action.

A

Findings of Fact.

I.

Parties and Jurisdiction.

1. Plaintiff is a private corporation, duly organ-

ized and existing under the laws of the State of Texas, with its principal place of business in Harris County, Texas.

2. The Railroad Commission of Texas is domiciled in Travis County, Texas, and is the duly created and existing agency of the State of Texas, charged with the administration of the laws of the State of Texas governing the conservation of oil and gas and the production thereof. Defendants, Lon A. Smith, Ernest O. Thompson and G. A. Sadler, are the duly elected, qualified and acting members of and compose the Railroad Commission of Texas. Their official residences are in Travis County, Texas. Defendant Gerald C. Mann is the duly elected, qualified and acting Attorney General of Texas, with his official residence in Travis County, Texas. Proper notice of this action has been given to the Governor and the Attorney General of Texas, and proper service of process has been had upon all of the defendants. Furthermore, the defendants have filed their answer to the original and supplemental complaints.

3. This is a civil action. The amount in controversy exceeds $3000.00, exclusive of interest and costs. In this action, plaintiff has attacked certain orders of the Railroad Commission of Texas fixing top allowables and prorating the allowable production among properties in the East Texas field on the ground that such orders as construed, applied and enforced against the plaintiff are without authority at law and are in contravention of the due process and equal

protection clauses of the Fourteenth Amendment to the Constitution of the United States.

4. The plaintiff asked for preliminary injunctions in its original and supplemental complaints, and hearings were had and judgments entered on motions for preliminary injunctions before three-judge statutory courts, and the action was subsequently tried on its merits before a three-judge statutory court. Such statutory courts were duly constituted and assembled under Section 266 of the Judicial Code, as amended.

II.

General Geologic Description of the East Texas Reservoir.

5. The East Texas field is one huge reservoir embracing originally some 133,000 acres of land and at present including some 131,330 acres of land situated in Rusk, Gregg, Smith, Cherokee and Upshur Counties, Texas; the field is approximately 40 miles long north and south, and averages about 4 miles wide east and west. The reservoir is in the Woodbine sand at an average depth of some 3,650 feet below the surface. In it the oil is confined by an impervious formation (Austin chalk) above, and an impervious formation (Georgetown lime) and water below. A cross section of the field extending from west to east has the shape of a vast obtuse-angled triangle, with one of the short sides (westward) of the triangle resting on the water table as a base, with the other short side of the triangle (being a portion of the imper-

vious bed of Georgetown lime) extending eastward and upward, and with the longest or top side extending from the point of contact between the oil, the water and the impervious roof on the west side of the structure, along such roof upward and eastward to the eastern extremity of the field. On the extreme west edge the oil-saturated portion of the sand is very thin, being less than a foot or so in thickness; going eastward, it gradually increases in thickness to the middle of the oil-saturated portion of the reservoir or the so-called "fairway," where the oil sand attains a maximum thickness of about 90 to 100 feet; then the oil-saturated sand gradually decreases in thickness until it is pinched out and vanishes on the east edge of the field. The Woodbine sand extends in a westerly and upward direction from the field to an outcropping some 100 to 150 miles west and northwest of the field. Underlying approximately the west half of the oil-bearing sand and extending westward and upward to the outcropping is a vast amount of salt water occupying practically all of the Woodbine sand except that occupied by oil and gas. This salt water exerts pressure against the oil and gas in the reservoir. The pressure originally was some 1650 pounds per square inch, but as the field has been produced the pressures have been reduced, and a pressure gradient has been built up across the field from west to east ranging from an average of nearly 1200 pounds per square inch on the west to an average of about 900 pounds per square inch on the east. The pressure of the water is the principal source of reservoir energy. As wells are drilled into

the producing sand, the reservoir pressures and the expansion of the gas in solution in the flowing wells, force the oil to the surface through the wells, thus affording the energy by which the field is produced. With respect to pumping wells, artificial means must be used to lift the oil to the surface. The differential in pressures from west to east tends to drive the oil, as the field is produced, from west to east.

6. Gas is dissolved in the oil and will not come out of solution until pressures are reduced to approximately 750 pounds per square inch on the average. The presence of the dissolved gas makes the oil less viscuous, and materially increases its capacity to move through the pore spaces in the sand. If pressures are so reduced that gas comes out of solution, it will form bubbles in the producing sands and the oil will become more viscuous, thus materially impairing the ability of the oil to flow through the sands. Gas has already come out of solution in a small area in the southeastern portion of the field.

7. Furthermore, experience has shown that the field cannot for any extended period produce at a rate materially in excess of 400,000 barrels of oil per day without causing waste, considering that an average of about 200,000 barrels of water daily are currently being produced from the field with about 400,000 barrels of oil. If the top allowable for the field is placed too high, the reservoir pressure will drop rapidly and create conditions conducive to waste; and, considering the varying densities to which properties in the field have been drilled, there will be non-ratable withdraw-

als from the field, if much of the allowable be prorated on the per-well or per-well potential basis, or any basis giving too much value to wells or potentials, thus resulting in an uneven or irregular rise of the water table. This will cause large quantities of oil to be trapped off or enveloped by what is known as coning or channeling of the water, and will greatly reduce the ultimate recovery from the field, thus causing physical waste.

8. The Woodbine sand, in which the oil and gas are found in the field, is a very porous and highly permeable sand; there is intercommunication between all parts of the reservoir, thus permitting rather free movement of oil and gas from one portion of the reservoir to another. The fluids flow from areas of higher to areas of lower pressure, thus resulting not only in local migration, but also in a general movement or encroachment upward and eastward of water from the west, being a normal movement in the light of the pressure gradient across the field, high on west, lower in the east. A well drilled into the reservoir and operated under proper conditions of control of reservoir pressure will effectively drain an area of at least ten acres.

9. The number of acre-feet of net effective oil sand in the field, or in a lease in any portion of the field, can be determined actually and relatively with reasonable accuracy by taking into consideration such factors as the number of acres of land in a lease and the average thickness of the net oil sand under the lease. It is likewise possible to determine with reasonable ac-

curacy, actually and relatively, the quantity of oil per acre-foot of net effective oil sand, and the quantity of recoverable oil in the field and in the various leases in the field assuming the conditions under which the field is to be operated.

III.

Extent and Location of Plaintiff's Properties.

10. Plaintiff owns leases covering approximately 14,656 surface acres of land within the producing limits of the field. Such leases comprise approximately 11.4 per cent of the producing acreage within the field. Some of its leases lie in the western portion and some in the eastern portion; but most of its leases are situated along a line running in a northerly and southerly direction near the middle of the field; that is, for the most part, its leases are located in the so-called "fairway," or that portion of the field where the producing sands have the greatest thickness and largest quantity of recoverable oil in place.

IV.

The Oil Reserves in the Field and Under Plaintiff's Leases.

11. Plaintiff's leases originally contained approxi- 14.3 per cent of the acre-feet of net oil sand in the field. The average thickness of the net oil sand under plaintiff's leases was 48.29 feet, while the average thickness of the net oil sand under the field as a whole was 37.78 feet.

12. Competent petroleum engineers and geologists will agree fairly well concerning the amount of oil per acre-foot of net oil sand in place in the East Texas field. The percentage of the oil which can be recovered per acre-foot depends upon the manner in which the individual wells and the field as a whole are operated. If a proper allowable for the field and ratable production are maintained, a higher rate of recovery per acre-foot may reasonably be expected than if the allowable for the field is excessive, or if excessive localized withdrawals are permitted. The opinions of competent engineers and geologists may vary as to what the actual rates of recovery per acre-foot in the field will be in the future, due in part to their differences in assumptions as to the conditions under which the field may hereafter be operated. Such possible variances in recovery figures would not materially change the percentage of the total volume of recoverable oil in the field which lies under plaintiff's leases. Whether the rate of recovery per acre-foot in the field be high, medium, or low, plaintiff's percentage of the oil actually recovered (by itself or others) should not vary materially, due to the relation which exists between the number of acre-feet of oil sand under its leases compared with the number of acre-feet of oil sand in the field as a whole.

13. Up to June 1, 1939, the field had produced approximately 1,365,000,000 barrels of oil. Of this amount, plaintiff's leases produced approximately 131,000,000 barrels, or only about 9.6 per cent of that portion of the original reserves which had been depleted

up to that time. Plaintiff has been permitted in the past to recover only 11/15 as much oil per acre-foot of its oil sand depleted as the field as a whole has been permitted to produce per acre-foot of sand depleted.

14. At the present time the amount of net oil sand under plaintiff's leases is at least 14.3 per cent of the total net oil sand now in the field; and it now has under its leases at least 14.3 per cent of the total remaining recoverable reserve of oil in the field.

V.

Comparative Drilling Densities in the East Texas Field.

15. The East Texas field has been drilled to an average density of one well to approximately 5.17 acres. Plaintiff's properties have been drilled to an average density of one well to about 5.8 acres. Properties in the field other than plaintiff's properties have been drilled to a density of one well to approximately 5.1 acres. While the Commission's rule which provides for well spacing, known as Rule 37, has been changed from time to time, more than 65 per cent of the wells completed in the field have been drilled under permits granted by the Commission in exception to the rule. Since early in 1933, a 10-acre spacing rule has been in force. There is no uniformity of spacing in the field. Many areas in the field have been very densely drilled; for example, on 109 acres, some 360 wells have been drilled to a density of 0.1 and 0.4 of an acre, or an average density of .3 of an acre per well. On 374 acres in the field, some

523 wells have been drilled to a density between .5 to .99 of an acre, or to an average density of .71 of an acre per well. On 2013 acres some 1336 wells have been drilled to a density of between 1 and 1.9 of an acre, or an average density of 1.5 acres per well. On 5637 acres some 2237 wells have been drilled to a density between 2 and 2.9 of an acre, or an average density of 2.5 acres per well. On 30,160 acres some 7331 wells have been drilled to a density between 3 and 4.9 of an acre, or to an average density of 4.1 acres per well. On 57,485 acres some 9879 wells have been drilled to a density between 5 and 6.9 of an acre, or to an average density of 5.85 acres per well. On 37,159 acres some 4128 wells have been drilled to a density of 7 acres or more per well, or an average density of 9 acres per well.

VI.

The Allowable Schedules and the Basis of Allocation Under Order of June 19, 1939.

16. The defendant Railroad Commission's statewide order of June 19, 1939, which became effective at 7:00 A. M., July 1, 1939, provided for an allocation of production on the basis of 2.32 per cent of the hourly potential capacity of the several wells in the field as determined by the Commission. Such hourly potentials were determined by taking potential tests on some seventy key wells. Using these wells as control points, contour lines of equal potential were drawn. Wells other than key wells, falling between the con-

tour lines, were then assigned potentials based on their relative positions with respect to the contour lines, whatever their actual potentials in reality may have been. Such a method of calculating or determining potentials necessarily involves the assumption, or finding, that relatively uniform conditions exist over wide areas adjacent to each key well. In connection with the proration order of June 19, 1939, the Commission issued its allowable schedule under which it fixed the daily allowable production for the various wells in the field, and issued a shutdown order, shutting down the entire field on certain specified days. These orders became effective July 1, 1939, and under their terms were to continue in effect until 7:00 A. M., October 1, 1939. From an examination of the schedules, it appears that the above proration order as construed, applied and administered by the Commission, allocated production among the various wells in the field, on the days on which the wells were permitted to produce, on substantially the following basis:

(a) The field allowable was approximately 521,500 barrels per day.

(b) Wells incapable of making 20 barrels per day, which were classed as marginal wells, were permitted to produce all of the oil they were capable of producing. There were some 559 wells so classified, and they produced approximately 6400 barrels per day.

(c) Wells capable of producing 20 barrels per day, or more, and to which the Commission

assigned hourly potentials of less than 865 barrels, were permitted to produce exactly 20 barrels per day. There were some 18,951 such wells to which were allocated approximately 379,000 barrels per day.

(d) Wells which were assigned an hourly potential of 865 barreels, or more, were permitted to produce 2.32 per cent of the assigned hourly potential. There were some 6300 such wells to which were allocated approximately 135,900 barrels per day.

To each non-marginal well was allocated 20 barrels per day. Only between 7000 and 10,000 barrels per day were prorated among the 6300 wells having more than 865 barrels hourly potential. The actual range of allowable was from 20 barrels to slightly less than 26 barrels per day. In substantial effect the order was a per-well order. Under said order and schedules, plaintiff was permitted currently to produce 9.93 per cent of the field allowable. Had plaintiff's allowable been based on comparative reserves, it would have been 44 per cent higher than it was.

Such allocation gave no separate consideration to acreage, sand thickness, bottom hole pressure, position on structure, the number of acre-feet of oil sand in a lease, or the recoverable reserves under a lease.

17. After a hearing before a statutory three-judge court on plaintiff's motion for preliminary injunction, the court found the order and schedules of June 19, 1939, unreasonable, confiscatory and void as to plain-

tiff, and on August 12, 1939, granted plaintiff a preliminary injunction, restraining defendants from enforcing said order and schedules against the plaintiff pending final disposition of this action on its merits, and permitting plaintiff to produce 144 per cent of the schedules allowable for each of its wells in the East Texas field. Plaintiff duly executed and filed the required bond which was approved by the court. Plaintiff produced oil for a few days under the terms of the preliminary injunction. It was stipulated on the trial of this action on its merits that the defendants would never seek to enforce against plaintiff any fines, penalties or forfeitures, or to take any other action against plaintiff because of its having produced oil from its wells in the East Texas field to the extent that it was permitted to produce under the terms of the preliminary injunction.

VII.

Allowable Schedules and Basis of Allocation under Orders of September 11 and September 29, 1939, and January 24, 1940.

18. The Commission's proration orders for the East Texas field of September 11 and September 29, 1939, and January 24, 1940, and the schedules issued in connection therewith, are all substantially the same. Accompanying them were shut down orders, the shut down order of January 24, 1940, closing all wells in the East Texas field, except wells classed as marginal wells, for twelve days during the month of February, 1940.

19. The salient provisions of such proration orders and schedules are:

(a) They fixed a top allowable of approximately 691,000 barrels daily for the field.

(b) They allotted 20 barrels per day to each well capable of making that many barrels, or more. There were some 25,456 wells of this kind to which were allotted approximately 509,000 barrels per day under this particular clause of the order.

(c) To wells incapable of making 20 barrels per day they allotted what they could make. These wells were classed as marginal wells. There were some 514 such wells to which were allotted some 6245 barrels per day.

(d) The balance of the field allowable, amounting to about 176,000 barrels per day, was allocated among wells capable of making more than 20 barrels per day. Each such well received in addition to 20 barrels per day, an amount determined by multiplying the proratable oil, approximately 176,000 barrels per day, by a fraction whose numerator was the product of the well's hourly potential by its bottom hole pressure by the thickness of the saturated Woodbine sand underlying the well by the average number of acres per well in the lease, and whose denominator was the sum of such products for all of the wells in the field.

Thus, less than 1 per cent of the field allowable was allocated to so-called marginal wells. About three-fourths of the field allowable was allocated among wells on a flat per-well basis of 20 barrels per day, and about one-fourth of the field allowable was

allocated among those wells capable of making more than 20 barrels per day by use of the formula described in (d) above. All wells classed as non-marginal wells were permitted to produce only 17 days during February, 1940. The average actual daily allowable for the field and for the individual wells was reduced accordingly.

VIII.

Losses Sustained by Plaintiff under Existing Order and Schedules.

20. Following is a comparison of plaintiff's allowables under the order of June 19, 1939, and the order of January 24, 1940:

Field	*Plaintiff*	*Per Cent*
522,000 b/d	52,000 b/d	9.932%
691,000 b/d	77,000 b/d	11.17%

Plaintiff's increase due to increase in the top allowable for the field was 16,600 b/d, or 66 per cent of its total increase. Plaintiff's increase due to distribution under the formula in February order was 8,400 b/d, or only 34 per cent of its total increase, or about 9 per cent of its allowable.

21. While plaintiff owns at least 14.3 per cent of the remaining recoverable oil reserves in the field, as stated above, its current scheduled allowable is only 11.17 per cent of the current scheduled allowable for the field. Considering shut-downs, its current actual allowable is 11.11 per cent of the current actual al-

lowable for the field. On the basis of comparative reserves, and considering the position of plaintiff's properties on structure, because of which some will produce less and some more than the reserves under them at the present time, plaintiff is nevertheless currently deprived of an opportunity to produce 3.13 per cent of the field scheduled allowable or 3.19 per cent of the field's actual allowable. This amounts to a restriction of about 29 per cent on plaintiff's current allowable.

22. (a) As stated above, the flat allowable of 20 barrels per well per day consumes approximately 3/4ths of the field allowable, and only about 1/4th of the field allowable is apportioned among wells under the formula mentioned in paragraph 19(d). The poorer wells and properties, as well as the better wells and properties, share in this apportionment; that is, the poorer wells and properties are permitted to receive an allowable over and above the flat 20 barrel minimum. The discriminations comlained of result almost entirely from the use of the 20 barrel minimum. No good reason is shown why a minimum per-well allowable of 20 barrels per day is necessary. If the entire field allowable were apportioned in accordance with the factors mentioned in paragraph 19(d) with no per-well minimum, plaintiff's properties would be permitted currently to produce slightly in excess of 14.3 per cent of the current field allowable. It appears that, without using the per-well minimum, the factors employed can be given such values in a formula that a reasonable method of distribution can be effected.

(b) As a consequence of the method of allocation used, densely drilled leases in any part of the field receive much more allowable in proportion to reserves than neighboring leases less densely drilled; and leases in the eastern and western portions of the field, where the oil sand is relatively thin, are allotted much higher allowables in proportion to their reserves than are leases in the fairway where the oil sands are thickest and the reserves greatest. The so-called fairway properties, except those which are very densely drilled, are being and will be severely drained by the leases lying in the eastern part of the field. Under the existing order, or orders similar thereto, the less densely drilled areas and particularly leases in the fairway, are not afforded an opportunity currently to recover their fair share of the oil, and probably will not ultimately be afforded an opportunity to recover substantially the equivalent of the recoverable reserves under them; while the densely drilled leases and leases particularly in the eastern portion of the field are currently afforded an opportunity to recover far in excess of their fair share, and ultimately will probably be afforded an opportunity to produce far in excess of the equivalent of the reserves underneath them.

(c) Under open flow conditions, properties in the fairway would have a distinct advantage over properties on the west side and properties on the east side of the field in enjoying recoveries in comparison with reserves. This is because, under open flow conditions, water would rapidly encroach and flood the oil sands on the west, and pressures would rapidly decline in the

eastern portion of the field, while in the fairway water encroachment and pressure decline would be delayed. No sufficient explanation has been given as to why it is necessary, under conditions of control, to restrict fairway properties and wells and to favor west side and particularly east side properties and wells in such manner as to bring about the result complained of by plaintiff.

23. Under the orders and schedules complained of by plaintiff, assuming that the wells on tracts adjacent to each other have identical potentials, pressures, sand thickness, and reserves, a 5-acre lease with five wells on it on the west side of the field would be permitted to produce about 5 times as much oil per day as an adjoining 5-acre lease with only 1 well on it; a 5-acre lease in the fairway with 5 wells on it would be permitted to produce about 3 times as much oil per day as an adjoining 5-acre lease with 1 well on it; a 5-acre lease on the east side of the field with 5 wells on it would be permitted to produce about 5 times as much oil per day as an adjoining 5-acre lease with 1 well on it. This is representative of what actually takes place. Moreover, most leases on the west side and practically all, if not all of the leases on the east side of the field are permitted to produce several times as much oil per day in comparison with reserves as are leases in the fairway, excepting those fairway leases which are very densely drilled.

In general, this results in severe drainage from leases in the fairway to leases in other parts of the field, or, to put it another way, the result is that, in

general, leases in the fairway are not permitted to obtain current, and may not obtain ultimate, recoveries on a basis comparable to recoveries permitted to leases in other parts of the field. Plaintiff's leases, for the most part, are located in the fairway, and this accounts in a large measure for the severe drainage that its leases are currently suffering under the existing orders and schedules, and will probably ultimately suffer if such orders and schedules are maintained in force.

24. The arbitrary allocation of about three-fourths of the field allowable on a flat per well basis of 20 barrels bears no relation to the prevention of physical waste, and is not justified by the necessities of the case.

IX.

Plaintiff Has Enough Wells

25. Plaintiff having drilled its leases to an average density of approximately one well to 5.8 acres, already has more than enough wells to recover efficiently and effectively, without waste, the recoverable oil in its leases, and to produce its proper share of the allowable production. One well will effectively drain more than 10 acres on each of plaintiff's leases, and already it has drilled each of its leases to a density of less than 10 acres. The main factor working for prevention of waste in the East Texas field is the maintenance of a top allowable not materially exceeding the present figure with respect to total liquids produced. The per-well method of dis-

tribution tends to cause waste as a result of concentration withdrawals where drilling is dense.

X.

Drilling and Production Costs in the East Texas Field.

26. It costs about $10,000.00 to drill and equip an oil well in East Texas field. It costs about $2500.00 to equip a well with pumping equipment. Most pumping wells in the East Texas field can be operated at a profit on a daily production of as little as 5 barrels each. Many pumping wells in the field have been operated over a period of years on an average production of less than 5 barrels per day. A few pumping wells, if producing large quantities of water, may not be able to operate at a profit if producing no more than 5 barrels of oil per day; but if such wells were closed in, practically all, if not all, of the recoverable oil in the tracts on which such wells are located could be produced by other wells, and no substantial waste would result from the abandonment of such wells. Flowing wells in the East Texas field can be operated at a profit on less than 5 barrels per day average production.

27. Practically all wells in the field have been drilled more than two years, and have produced more than a sufficient amount of oil to pay for the cost of drilling, equipping and operating such wells. Some of the wells drilled within two years from this date have doubtless paid out, while many of the wells

drilled less than two years ago have in a large measure paid out.

XI.

Efforts of the Plaintiff to Obtain Relief from the Commission.

28. Plaintiff has repeatedly and diligently endeavored to obtain administrative relief from the Railroad Commission of Texas, and to secure an adjustment of the allowable for its wells in the East Texas field in such manner as to afford it an opportunity currently and ultimately to produce its fair share of the oil from the field. In spite of such efforts the defendant Commission has failed and refused to grant to plaintiff the relief sought.

XII.

Confiscation and Irreparable Injury.

29. The program of regulation outlined above results in the taking of plaintiff's property and giving it to others, without any compensation and without any reasonable necessity. Plaintiff is deprived of a reasonable opportunity to produce currently a very substantial quantity of oil which it would be entitled to produce under a proper method of regulation. The loss to plaintiff under such a program amounts to a very large figure daily, and will probably amount to an enormous figure over a period of years if the program be continued. Even if plaintiff should be authorized to drill additional wells in an effort to

increase its percentage of allowable production, and even if plaintiff should elect to drill such wells, it is mere speculation to say that its allowable would be materially increased, for it is reasonably certain that other operators would likewise be given permits to drill, and the result would be nothing more than further useless expenditure for wells, with little or no relative change in the distribution of the allowable as far as plaintiff is concerned. Since plaintiff already has enough wells to produce efficiently its allowable, should it be required to drill additional wells as a prerequisite to obtaining its proper allowable, confiscation would result to the extent of the unnecessary expenditure. There is nothing in the orders or program of the Commission which even suggests that the losses already incurred by plaintiff, and to be incurred by the present program, can or will be offset by increasing the allowable of the plaintiff in the future in order to make up for any losses which have occurred or may hereafter occur.

30. The regulation by the Commission does not allocate or distribute the allowable production for the field on a reasonable basis, and is arbitrary, discriminatory, confiscatory, and unreasonable as applied to plaintiff. It denies to plaintiff a reasonable opportunity to recover its fair share of the oil ultimately, much less within a reasonable time, resulting in a daily loss of many thousand barrels of oil worth many thousand dollars.

B.

Conclusions of Law.

In view of the facts found above, concerning which there really is little or no dispute in the evidence, the following conclusions of law are applicable:

1. This court has jurisdiction of the persons and subject matter involved in this action.

2. Subject to the interests of its royalty holders, plaintiff is the owner of the oil and gas in place under its leases in the East Texas field.

3. As the owner of its several leases in the East Texas field, the plaintiff is legally entitled currently and ultimately to produce its fair share of the oil produced from the field.

4. Under the statutes of Texas, Articles 6023, 6029 and Section 7 of Article 6049-c, Vernon's Annotated Revised Civil Statutes, the Railroad Commission is the administrative agency charged with the duty of preventing waste; and in administering the conservation statutes is required to apportion or allocate production of oil among properties in each field "on a reasonable basis."

5. The order of the Commission of June 19, 1939, for the East Texas field, and the schedules issued in connection therewith, as interpreted, applied and enforced against plaintiff, were unreasonable and void as to plaintiff. They did not afford to plaintiff an opportunity to recover its fair share of the oil. As to plaintiff they did not allocate the production in the field on a reasonable basis as required by the Texas

statutes; and they deprived plaintiff of its property without due process of law and denied to it the equal protection of the laws contrary to the Fourteenth Amendment to the Constitution of the United States.

6. The orders of the Commission of September 11 and September 29, 1939, and January 24, 1940, and the schedules issued in connection therewith for the East Texas field, as interpreted, applied and enforced against plaintiff (such orders and schedules being often referred to herein as the Commission's program of regulation for the field) are unreasonable, discriminatory, confiscatory and void as to plaintiff. As to plaintiff, they do not allocate the production in the field on a reasonable basis, as required by the statutes of Texas referred to in the preceding paragraph.

7. The program of regulation complained of by plaintiff does not within reasonable limits protect the property rights or privileges of plaintiff; it does not give to plaintiff the opportunity to produce currently its fair share, or prevent reasonably avoidable drainage of its properties considered as a whole, although plaintiff has more than enough wells already drilled on its properties from which its fair share can be produced without waste. To require plaintiff to drill any further or additional wells upon its properties would be to require plaintiff to make unnecessary and wasteful expenditures of money and, in itself, would be a confiscation of plaintiff's property.

8. Such program of regulation operates to confiscate plaintiff's property, and unreasonably discriminates against plaintiff, contrary to the due process

and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States; and such program of regulation is void as far as plaintiff is concerned. It is not necessary to prescribe and enforce such a program of regulation against plaintiff in the East Texas field in order to prevent physical waste of oil and gas, or for any other reason.

9. Plaintiff is currently suffering immediate and irreparable injury under such program of regulation, and, so long as such program is maintained in force and effect, will continue to suffer irreparable injury, unless the defendants are enjoined from enforcing such a program of regulation against plaintiff in the East Texas field. Plaintiff is without an adequate remedy at law to protect itself against losses which have occurred and which will continue to occur under the program of regulation now in vogue. Furthermore, the Texas Statutes (Acts of 1935, 44 Leg., Reg. Sess., p. 180, c. 76, Sec. 14; Sec. 8 of Article 6049c of Vernon's Annotated Revised Civil Statutes of Texas) apparently recognize that no adequate remedy at law exists in such an instance, for the statutes specifically authorize a suit for injunction against the Commission and the members thereof in a court of competent jurisdiction in Travis County, Texas, by any interested person affected, for the purpose of testing the validity of any statute, rule, regulation or order relating to the conservation of oil and gas. This court is a court of competent jurisdiction in Travis County, Texas.

10. The marginal well statute (Acts of 1931, 42nd Leg., Reg. Sess., p. 92, C. 58; Article 6049b of Ver-

non's Annotated Revised Civil Statutes of Texas) is not patently invalid. Since it appears that less than 1 per cent of the total daily allowable production from the field is allotted to marginal wells as defined by the Commission, the court finds it unnecessary to pass upon the validity of said marginal well law. There is nothing, however, in the marginal well law which requires the Commission to use the method of distribution and program of regulation now in vogue, or which prohibits the Commission from limiting non-marginal wells below the minimum allowable applicable to true marginal wells as defined by the statute.

11. The Texas statute, cited in Section 9 of these Conclusions of Law, provides that any interested person who is dissatisfied with the effect upon him of any statute, rule, regulation or order relating to the conservation of oil or gas may institute suit for injunction to test the validity of such statute, rule, regulation or order. The statute does not require that the complaining party first seek relief from the Commission, with respect to its acts which are claimed to be invalid, as a prerequisite to the seeking of an injunction. Furthermore, if the statute be properly interpreted to mean that relief should first be sought from the Commission, and even conceding that, as a general rule, relief from a court should not be sought if the same relief could promptly be obtained by application to the administrative agency (Commission in this instance), then it appears that plaintiff, an interested person, has already sought such relief from the

Commission and has fully exhausted its administrative remedy without obtaining relief.

12. The record shows virtually no dispute as to the facts. The law being clear as applied to such facts, the court finds that an injunction should issue, substantially as prayed for by plaintiff enjoining defendants from enforcing, or attempting to enforce, the orders and schedules complained of against plaintiff or its properties in the East Texas field, or from suing for or otherwise attempting to claim or collect penalties, or to enforce forfeiture, or in any other manner to penalize plaintiff or the oil produced as set forth in the final judgment to be entered in this action as directed by the court.

The final judgment is directed accordingly.

Done as of date March 17, 1940.

SAML. H. SIBLEY,
Circuit Judge,
JAMES V. ALLRED,
District Judge,
ROBERT J. MCMILLAN,
District Judge.

ENDORSED: IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION HUMBLE OIL & REFINING COMPANY, PLAINTIFF VS. RAILROAD COMMISSION OF TEXAS ET AL, DEFENDANTS. CIVIL ACTION NO. 31 FINDINGS OF FACT AND CONCLUSIONS OF LAW FILED 20th DAY OF MARCH, 1940. MAXEY HART, CLERK, BY JOE STEINER, DEPUTY.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1940

NO. 57

RAILROAD COMMISSION OF TEXAS ET AL., *Appellants*,

v.

HUMBLE OIL & REFINING COMPANY, *Appellee*.

BRIEF FOR APPELLEE

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

NO. 57

RAILROAD COMMISSION OF TEXAS ET AL., *Appellants*,

v.

HUMBLE OIL & REFINING COMPANY, *Appellee*.

BRIEF FOR APPELLEE

OPINION BELOW

The opinion of the United States District Court for the Western District of Texas is not reported. An informal oral opinion was rendered on February 21, 1940 (R. 565), and findings of fact and conclusions of law were entered on March 20, 1940. (R. 573.)

STATEMENT OF GROUNDS FOR JURISDICTION

The jurisdiction of the Supreme Court of the United States is invoked under Sections 238 and 266 of the Judicial Code, as amended by the Act of February 13, 1925. (U. S. C. A., Title 28, Sections 345 and 380.)

The judgment appealed from is dated March 19, 1940, and was filed on March 20, 1940. (R. 570.) The appeal was allowed in this case by an order of the District Court entered on April 1, 1940. (R. 602.) The record was filed in this Court on April 19, 1940, and the order noting probable jurisdiction was entered on June 3, 1940.

STATEMENT OF THE CASE

1. Proceedings in the District Court.

Appellants' statement of the proceedings below is substantially correct; however, additional facts should be given. The statement by appellants fails to show that appellee attacked the proration orders on the ground that they deny to it the equal protection of the laws, in addition to taking its properties without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States. (R. 22, 47, 50.)

Appellants' statement also fails to state that appellee alleged that the proration order of June 19, 1939, providing that each well in the field should be allowed daily 2.32% of its hourly potential producing capacity as determined by the Commission, was actually applied contrary to its express terms, with the result that such order as applied was practically a per-well order.[1] (R. 9, 10, 580.)

[1]Appellee alleged that the order as written provided that each well should be allowed to produce daily only 2.32% of its hourly potential producing capacity as determined by the Commission; that contrary to its express terms, the Commission enforced and applied the order in an entirely different manner; that wells hav-

2. Issues Involved.

Appellee contends that the evidence clearly shows, with no substantial evidence to the contrary, that the particular methods of proration set forth in the orders under attack fail to allocate to appellee, in accordance with its property rights, its fair share of the oil produced in the East Texas Field; that such orders are, therefore, arbitrary, unreasonable, discriminatory, confiscatory and void as to appellee, in that they violate its rights under the due process and equal protection clauses of the Fourteenth Amendment, and do not allocate the production on a reasonable basis as required by the statutes of Texas; that there is no public necessity that the method of distribution employed be enforced against appellee in order to prevent waste, or for any other lawful reason; and that the Federal Courts have the power and duty to afford to appellee a judicial review of the orders complained of, to determine appellee's property rights, and to decide whether or not they have been invaded.

Appellee is raising no question as to the validity of the conservation or proration laws of the State; does not assail as being wasteful the top allowable for the East Texas Field fixed by the Commission;

---

ing assigned potentials ranging from 20 barrels per day to 865 barrels per hour each, were arbitrarily assigned a flat allowable of 20 barrels per day each, which was more than 2.32% of their hourly potentials (R. 9, 580); that only such wells as had assigned to them hourly potentials in excess of 865 barrels were limited to 2.32% of their hourly potentials; that the order was practically a per-well order; that marginal wells in the field, that is, pumping wells incapable of making as much as 20 barrels per day, some 554 in number, were permitted to produce to capacity. (R. 9, 10.)

does not place in issue the small allocation made to the 514 marginal wells in the field, such wells having an allowable of less than 1% of the field allowable; *and does not advocate or insist upon any particular plan of proration.*

3. General Description of Field.

The East Texas Field is one huge reservoir embracing some 133,000 surface acres, extending about 40 miles in length north and south, and averaging about 4 miles in width east and west. (R. 79, 574, 575.) A cross-section of the field is in the shape of a huge inverted triangle which is tilted upward from west to east (R. 575), the eastern extremity being about 180 feet higher than the western extremity. (R. 393.) The oil reservoir is in the Woodbine sand, and is formed by impervious material above, impervious material under the east side and water under the west side. (R. 4, 34, 575.) The Woodbine sand is a huge sand body, outcropping about 150 miles west of the field; and, being filled with water, a great hydrostatic pressure is exerted on the oil reservoir. (R. 4, 34, 575.) The sands are very porous and permeable, and there is free intercommunication between all portions of the field. (R. 88, 89, 576.) However, on the extreme east edge of the field there is a strip of tight, less permeable sand extending from the north to the south end of the field, being about 500 feet in width, except in the southeastern part of the field where it widens to form a relatively small area wider than 500 feet. (R. 91, 108.) One well is capable of draining

as much as 10 acres, except perhaps in the strip just mentioned. (R. 266.) The oil sands are very thin on the extreme west; they increase in thickness going east to about 90 or 100 feet in the middle of the field, called the fairway; they then decrease in thickness going farther east until they pinch out to nothing on the extreme eastern edge of the field. (R. 575.) A graphic cross section of the field is shown at the bottom of appellee's Original Exhibit No. 19 which accompanies the record. (Offered, R. 157.)

The water underlying the west half of the field is the principal source of energy and exerts a pressure upward and eastward, with the pressure averaging at the time of trial about 1200 pounds per square inch on the west side and about 900 pounds per square inch on the east side of the field. There is a pressure gradient from west to east. (R. 575, 576.) This pressure differential causes oil to migrate from the west across the fairway to the east side of the field as the oil is produced. (R. 576.) Fluids flow from areas of higher to areas of lower pressure, resulting not only in local migration to areas where the rate of withdrawal is high, but also in a general movement upward and eastward. (R. 576.) Considering the varying densities to which properties in the field have been drilled, there will be non-ratable withdrawals from the field if much of the allowable is prorated on a per-well basis or any basis giving too much value to wells, thus resulting in an uneven and irregular rise of the water table, and causing physical waste. (R. 576.) As oil is withdrawn from the reservoir, the water table rises, progressively drowning out the

wells on the western edge of the field (R. 195); and as time goes on the water table will continue to rise, drowning out first the west one-third, then the fairway, and finally the eastern portion of the field (R. 195, 258), for the eastern margin of the field is some 40 to 80 feet higher than the highest point in the fairway. (R. 258, 416, 427.)

Since the field was discovered about 10 years ago, some 613 wells have been abandoned, of which 450 were on the west side, and only 163 were on the east side. (R. 391.) Practically all abandonments on the east side are in the narrow strip of about 500 feet wide where the sand is thin and very tight. (R. 114, 417.) The field has about 26,000 wells, but it is drilled on a very irregular or non-uniform pattern. (R. 579.) This is graphically shown on the original maps introduced in evidence by appellee which accompany the record. (Appellee's Exhibit 1, offered, R. 74; Exhibit 2, offered, R. 75; Exhibit 3, offered, R. 76; and Exhibit 4, offered, R. 77.) The field is drilled to an average density of one well to 5.17 acres (R. 578) although, as stated, the drilling pattern is extremely non-uniform.[2] (R. 579.)

---

[2]The following table illustrates the varying densities to which wells are drilled in the field:

Number of Acres	*Number of Wells*	*Density Range (Ac. per Well)*	*Average Density (Ac. per Well)*
109	360	.1 to .4	.3
374	523	.5 to .99	.71
2,013	1,336	1 to 1.9	1.5
5,637	2,237	2 to 2.9	2.5
30,160	7,331	3 to 4.9	4.1
57,485	9,879	5 to 6.9	5.85
37,159	4,128	7 up	9.0

(R. 472, 552, 579.)

(Continued on page 7)

4. Description of Appellee's Properties.

Appellee owns leases covering 14,656 surface acres, including 11.4% of the producing acreage, in the field. (R. 577.) They are located in all parts of the field as is shown by the maps mentioned above. About 7,700 acres of its leases are located in the west half of the field overlying the water table, while about 6,900 acres of its leases lie in the east half. (R. 95.) The average thickness of the oil sand under appellee's leases is about 10 feet greater than the average for the field as a whole. (R. 577.) *By reason of this fact, appellee's percentage of the oil in place is greater than its percentage of the surface acreage in the field.* Originally, 14.3% of the net oil sand in the field lay under appellee's properties (R. 81); and although appellee has been permitted to produce only 9.6% of the past production in the field, it so happens, as we shall later show, that because of the average position occupied by appellee's properties in the field, they still have in place under them 14.3% of the recoverable oil remaining in the field. (R. 83, 121, 122, 577, 578.)

Some 2,547 wells have been drilled on appellee's properties (R. 82), being 9.8% of the wells drilled in the field. Its leases are drilled to an average density

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This shows the large percentage of wells on tracts drilled to a density of less than 5 acres per well, and demonstrates as incorrect the statement in appellants' brief, page 54, to the effect that the wide variances in density have very little influence on the allowables "because there are so few wells drilled on small tracts" and "about two-thirds of the wells in the field are located on leases drilled to approximately the same density as leases of Humble Oil & Refining Company." Appellee's leases are drilled to an average density of 5.8 acres per well. (R. 578.)

of one well to 5.8 acres compared with the field average of 5.17 acres per well, the average density of wells on all properties, exclusive of appellee's property, being 5.1 acres per well. (R. 578.) Appellee has drilled enough wells on its properties to recover efficiently without waste the recoverable oil under its leases, and to produce its fair share of the allowable. (R. 585.)

5. The Proration Orders and Schedules and Their Effect on Appellee's Allowable Production.

a. *June Order and Schedule.*

While the order of June 19, 1939, provides that each well shall be allowed to produce daily 2.32% of its hourly potential capacity as determined by the Commission,[3] the Commission, in administering the order, did not allocate production on such basis. If it had allocated production in accordance with the order, some 18,951 wells would actually have received daily allowables ranging from about 4.6 barrels to slightly less than 20 barrels. However, contrary to the terms

[3]As used in the order, "hourly potential capacity" of a well means the amount of oil which the well is capable of producing in one hour. Actually, the Commission does not take the potential of each well. Some 70 wells, known as key wells, are selected over the field as being representative wells, typical of all wells in the area. The hourly potentials of these key wells are taken, then potential contour lines are drawn. From the contour map, potentials of all wells are assigned. A similar procedure is followed with respect to pressures.

Obviously, such method of determining potentials and pressures assumes a high degree of uniformity in sand conditions in any particular area, for a key well controls a large area. The assumption is justified.

of the order, the Commission, by its schedule of allowables, actually allocated the allowable production on a 98% per well basis of 20 barrels each. The field allowable of 521,500 barrels per day was actually distributed as follows: (a) 559 marginal wells (pumping wells incapable of producing 20 barrels daily) were allowed to produce all they could, being a total of 6400 barrels daily, about 1% of the field allowable (R. 582); (b) 18,951 wells having assigned potentials varying from 20 barrels daily up to 865 barrels hourly were allotted a flat 20 barrels daily each, or a total of 379,000 barrels daily; and, (c) 6,300 wells, each having an assigned hourly potential of 865 barrels or more, were permitted to produce 2.32% of their assigned hourly potential capacity, or a total of 135,900 barrels daily. However, after allotting 20 barrels each to these 6300 wells, there actually remained only *from seven thousand to ten thousand* barrels to be prorated to the better wells with high potentials, as a result of the use of the potential formula stated in the order. The range between the poorest and the best wells was from 20 to about 26 barrels, and largely from 20 to 22 barrels. (R. 580.)

On August 10, 1939, a three-judge court granted a preliminary injunction restraining the enforcement of the June 19th order against appellee. (R. 38.) A few days thereafter, the Commission issued an order shutting down the entire East Texas Field for two weeks (R. 241), and on September 11th issued a new proration order for the East Texas Field which is discussed below.

b. *September and January Orders and Schedules.*

The orders of September 11th and 29th, 1939, and of January 24th, 1940, and the schedules issued in connection therewith, are all substantially the same. (R. 473, 476, 487, offered, R. 138, 139, R. 581, appellant's brief, pp. 7, 8.) Appellants' brief, page 6, correctly quotes the portion of the September order which provides the plan of allocating the allowable production. The trial court found, and it is undisputed, that these orders operate as follows (R. 581, 582): The allowable for the field for each producing day was approximately 691,000 barrels, of which (a) 514 marginal wells, incapable of making 20 barrels daily, were allotted what they could make, or a total of 6,245 barrels daily, being less than 1% of the field allowable; (b) 25,456 wells, being all other wells in the field, were allotted a flat 20 barrels each per day, or a total of 509,000 barrels, and (c) the remainder of the daily field allowable, 176,000 barrels, was allotted to all the 25,456 non-marginal wells, according to a formula which considered potential, bottom-hole pressure, acreage and sand thickness.

This method of allocation resulted in distribution of three-fourths of the field allowable on a flat per well basis of 20 barrels each. Only about one-fourth of the field allowable was distributed in accordance with the factors of potential, bottom-hole pressure, acreage and sand thickness. All non-marginal wells, whether or not they were receiving more than their fair shares by virtue of the flat 20-barrels allowable, were awarded an *additional* amount under the for-

mula, so that no non-marginal well received exactly 20 barrels. In other words, each non-marginal well was first allowed to produce 20 barrels per day regardless of its potential, bottom-hole pressure, acreage, sand thickness or the oil in place under it, and was also permitted to produce an additional amount over and above the 20-barrel per day allowable. (R. 474.) Obviously, the 20 barrels per day was not a minimum allowable but was in fact a base allowable. (R. 474.)

c. *Operation of Orders Upon Appellee.*

The effect upon appellee of the order of June, and the orders of September and January, may be summarized as follows:

	June Order	Later Orders
Scheduled daily allowable	52,000 bbls.	77,000 bbls.
Appellee's per cent oil in place	14.3%	14.3%
Per cent of field allowable to appellee	9.932%	11.17%
Loss (per cent field allowable)	4.4%	3.17%
Loss (pct. Humble allowable)	44%	29%
Loss in barrels daily	22,800 bbls.	21,600 bbls.

(R. 142, 143, 582, 583).[4]

[4]In connection with the June order and the September and January orders the Commission issued orders shutting down the field on certain days, except that under the January order the marginal wells were not shut in. In view of the shut-down orders, the average daily allowable over a monthly period for the field and for appellee's properties was proportionately reduced, but in a relative sense the figures remain the same. In order to avoid confusion, the shut-downs will not be referred to unless the discussion requires that this be done in connection with a particular point.

Appellee does not contend, as appellants assert it does, that the field must be prorated currently, or at any time, upon the basis of reserves or oil in place or upon any other particular basis. (R. 21, 22, 45.) It so happens that, because appellee's properties are scattered all over the field, and occupy an average position, it cannot *currently* obtain its fair share of the oil unless it currently receives about 14.3% of the field allowable, which happens at this time to be its percentage of the reserves of the entire field. (R. 121.) Appellee does not contend, as appellants seem to think, that the allowable for each of its leases must be distributed in the proportion that reserves under each lease bear to reserves of the entire field. Whatever the method of allocation employed may be, appellee is entitled to its fair share of the field allowable.

d. *Order Now in Effect.*

Shortly after this Court handed down its opinion in the case of *Railroad Commission of Texas et al. v. Rowan & Nichols Oil Company,* 60 S. Ct. 1021, the Railroad Commission issued an emergency order for the East Texas Field dated June 19, 1940, and effective from June 22nd to July 7, 1940. Under date of July 5, 1940, it issued another order for the East Texas Field effective from July 7th to September 1, 1940. On August 28, 1940, the Commission issued another order for the East Texas Field effective during the months of September, October and November, 1940. All three of these orders were substantially the same as the order of June 19, 1939, as enforced and

applied by the Commission. The top allowable under the September and January orders was 691,000 barrels. It is now about 521,500 barrels, the same as under the order of June, 1939. A copy of that portion of the order of August 28, 1940, relating to the East Texas Field, is copied in the appendix. The Commission is now enforcing the latter order against the appellee.

By stipulation of the parties (R. 471) the pleadings were made to relate to future orders substantially the same as the ones actually complained of. The injunction issued by the Court in the final judgment applies to such future orders. (R. 570.) On page 33 of their brief, appellants admit that the order of June 19, 1939, is more drastic in its effect upon appellee than are the September and January orders. The injunction and this appeal involve the order of June 19, 1939, and all subsequent orders, including the order now in force, since such orders are substantially the same as the September and January orders, being even more drastic than the last mentioned orders.

SUMMARY OF ARGUMENT

1. This case is not controlled by the decision of this Court in the case of *Railroad Commission of Texas et al. v. Rowan & Nichols Oil Company,* 60 S. Ct. 1021, nor did the trial court substitute its judgment for that of the Railroad Commission.

2. Appellee is the owner of the oil underlying its leases in the East Texas Field; and the Railroad Commission, in distributing the total daily production

from the field among the producers, must afford appellee a reasonable opportunity to recover such oil or its equivalent. The due process and equal protection clauses of the Fourteenth Amendment require the Commission, as nearly as practicable, to protect appellee's property rights; that is, within reasonable limits, to prevent drainage from appellee's property which is not compensated by counter drainage. A Texas statute, requiring that alocation be made on a reasonable basis, further requires the Commission to respect and protect appellee's property rights.

3. The trial court having found that the facts are without dispute and that the orders complained of as to appellee are discriminatory, confiscatory and unreasonable, and there being no real dispute in the record that the orders as to appellee are discriminatory, confiscatory, and unreasonable, the judgment of the trial court should be affirmed.

4. The trial court after a trial *de novo* held that the orders as to appellee were discriminatory and confiscatory in violation of the Fourteenth Amendment, and were unreasonable in violation of the Texas statute; hence, if there were a conflict in the evidence, the Court properly performed its judicial function in resolving such conflict and in holding that the orders were void as to appellee. Such findings being fully supported by the evidence, the judgment of the trial court should be affirmed.

5. The evidence in this case clearly shows that the orders complained of as to appellee are discriminatory and confiscatory, in violation of the due process and

equal protection clauses of the Fourteenth Amendment, and are unreasonable, in violation of the Texas statute. In view of the restricted field allowable, the large number of wells, the varying densities to which wells are drilled, the striking variances in the amounts of oil in place under the several properties, and the longer life of most leases in the eastern portion as compared with the life of leases in the rest of the field, the use of the base allowable of twenty barrels necessarily renders the orders complained of discriminatory, confiscatory and unreasonable as to appellee, is wholly arbitrary and unnecessary, and bears no substantial relation to the prevention of physical waste.

6. Appellee used due diligence and exhausted its administrative remedy.

ARGUMENT

I.

This case is not controlled by the decision of this Court in the case of Railroad Commission of Texas et al. v. Rowan & Nichols Oil Company, 60 S. Ct. 1021, nor did the trial court substitute its judgment for that of the Railroad Commission.

This case is before this Court on its own record. The record here is not the same as the record in the *Rowan & Nichols* case.[5]

[5]On pages 13ff of his brief for appellant G. A. Sadler, Mr. Norman L. Meyers argues that the Rowan & Nichols case controls this case under the doctrine of *stare decisis*. He cites no author-

The order complained of in the *Rowan & Nichols* case may or may not have been confiscatory and discriminatory as to Rowan & Nichols Oil Company, depending upon the record applicable to that case and whether or not Rowan & Nichols Oil Company was able to show injury; but in no event does the situation as to Rowan & Nichols Oil Company control appellee's case.[6] The trial court found that the injury to appellee in this case "was clear, practically admitted." (R. 565.) It is fundamental that only those persons can successfully attack an order of the Commission who are injured by it, and prove their right to relief.

From the opinion of the majority of the Court in the *Rowan & Nichols* case, it would seem that there are many facts in the record of that case which are not in the record of this case; *and there are other matters relied on as facts by the majority opinion in that*

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ity whatever for his statement and gives no reason why the Rowan & Nichols case should be *stare decisis*. He entirely overlooks the essential fact that each case involving an attack on an order of the Railroad Commission on constitutional grounds, or on the ground of unreasonableness, must be decided upon its own facts. Any order may be confiscatory, discriminatory and unreasonable as to one operator and not be such as to another. In fact, if an order discriminates against appellee or takes appellee's property and gives it to other operators, or is unreasonable as to appellee, it must necessarily discriminate in favor of, or give appellee's oil to, other operators, and would not be discriminatory, confiscatory or unreasonable as to them.

[6]In the very beginning of the opinion in the Rowan & Nichols case, it is stated that the question before the court is the validity of the proration order "in so far as it applies to the respondent's wells." 60 S. Ct. 1022. Therefore, it clearly appears that the opinion is not a determination as to whether the orders here involved are invalid in so far as they apply to appellee's leases.

case which in this record are shown not to be the facts. An analysis of the *Rowan & Nichols* opinion and of the record in the present case shows that the two cases are entirely different. Among these differences are:

1. In the *Rowan & Nichols* opinion, the Court, in speaking of the proration program there involved, said:

> "By its order each well was allowed to produce 2.32% of its 'hourly potential'—that is, 2.32% of its hourly productive capacity under uncontrolled flow." 60 S. Ct. 1023.

The record in the case at bar shows that, under the order of June 19, 1939, some 514 marginal wells (wells capable of producing less than 20 barrels per day) were permitted to produce to their capacity (R. 139); some 19,000 wells with potentials ranging from 20 barrels per day to 865 barrels per hour, were permitted to produce a flat 20 barrels daily, and not 2.32% of their hourly potential (R. 351); while the remaining wells, about 6000 in number, and having hourly potentials in excess of 865 barrels, were permitted to produce 2.32% of their hourly potential. (R. 351, 580.) Since each well in this last group was given 20 barrels, less than 10,000 barrels was distributed on the potential basis among the best wells and properties.

2. In the *Rowan & Nichols* case the Court stated:

> "But the practical operation of this order was largely cut across by allowances made to 'marginal wells.' These are wells which, if their low

> productive capacity were legally curtailed, would have to be prematurely abandoned. Therefore, the Texas statute gives them a special status. In accord with its policy toward these marginal wells, the Commission freed them from the burden of its hourly potential formula by allowing them production up to twenty barrels a day. *Because of the large number of these low capacity units in the East Texas Field,* approximately 385,000 barrels out of a total daily 'allowable' of 522,000 barrels were exempt from the restricting formula, leaving only about 136,000 for the class within which respondent's wells fell. * * * Moreover, the allowance made to marginal wells absorbs so much of the total 'allowable' as to make the Commission's order in effect an allocation on a flat per well basis." 60 S. Ct. 1023. (Italics ours.)

There is no Texas statute which has been found by appellee, and none is cited or claimed to exist by appellants, which requires or directs the Commission to allow each well in the field 20 barrels daily, or *any* well in the field as much as 20 barrels daily if it can produce *more* than 20 barrels daily. There is a statute, known as the marginal-well statute (Acts of Texas, 1933, Reg. Sess., c. 97, p. 215) which is applicable *only* to pumping wells, and which, with respect to the wells of the depths of those in the East Texas Field, permits a pumping well that cannot produce as much as 20 barrels per day to produce to capacity. However, in the *Rowan & Nichols* opinion, the Court, in speaking of the total of 385,000 barrels allocated by permitting each well to produce as much as 20 barrels per day, said:

> "Therefore the Texas statute gives them a special status. In accordance with its policy toward these marginal wells, the Commission freed them from the burden of its hourly potential formula by allowing them production up to 20 barrels per day."

Since there is no statute requiring or directing the Commission to permit each well to produce as much as 20 barrels per day if it is capable of producing more than that amount, the record in the *Rowan & Nichols* case *must have shown that there were at least* 19,200 *pumping wells which could not produce as much as* 20 *barrels per day;* and that each of these wells could produce almost 20 barrels per day, for the total declared to be allotted to the statutory marginal wells was 385,000 barrels. The facts in the record of the case at bar, without any dispute whatever, show a very different factual situation from that stated by the Court to be shown by the record in the *Rowan & Nichols* case.

This record shows that there are only 514 marginal wells which could be classified as "low capacity units" (R. 139, 582) with an allowable of only about 6245 barrels per day, being less than one per cent of the field allowable. (R. 582.) This left about 515,000 barrels to be prorated under the June order and about 685,000 barrels to be prorated under the September and January orders among approximately 25,450 non-marginal wells in the field. (R. 580-582.) It is clear therefore that the record of the case at bar shows a factual situation with respect to "low capacity units"

or marginal wells which is entirely different from what must have been shown with respect to such wells in the record in the *Rowan & Nichols* case.

3. In the *Rowan & Nichols* opinion, the Court said that the reason why the Commission's proration formula permitted other leaseholders to capture oil at a more rapid rate than Rowan & Nichols were permitted to capture from their properties was

> "due to the allocation formula itself, *and more especially to the permission granted marginal wells to produce without limit up to 20 barrels a day.*" 60 S. Ct. 1023. (Italics ours.)

The record in this case shows that the allowance to the 514 marginal wells is about 6,250 barrels, or less than 1% of the field allowable (R. 139); and that it is the 20 barrels daily per well allowable to the non-marginal wells which consumes 98% of the field allowable under the June order and about 75% of the field allowable under the September and January orders. (R. 139, 140, 349, 580, 582.)

4. Possibly due to something appearing in the record of the *Rowan & Nichols* case, this Court seems to have misunderstood the so-called "rule of capture" and its effect upon the conservation program in Texas or elsewhere. The Court said:

> "State agencies have encountered innumerable difficulties in trying to adjust the many conflicting interests which grow out of the rule of capture and its implications." 60 S. Ct. 1024.

It seems to be implied that the rule of capture stood in the way of the adoption of a fair method of alloca-

tion, or caused the Commission to do something it would not have done except for such rule, and, therefore, the unreasonable, discriminatory and confiscatory nature of the order of the Commission should be condoned in the face of such difficulties.

The rule of capture has nothing to do with the amount of oil which an operator should be permitted to produce under proration. In *Brown v. Humble Oil & Refining Company,* 126 Tex. 296 (1935), the court declared that the rule of capture is a secondary and supplementary rule of convenience not in conflict with the rule as to ownership in place, but merely operating to quiet title to oil actually produced. As pointed out in the *Brown* case there is nothing in the rule of capture which prevents the Commission from adopting a fair method of allocation, or which would require the Commission to restrain one operator from producing in order that another operator will be permitted to drain the oil from under the lands of the former, or which would justify the Commission in carrying out such a program. This point is more fully discussed under Part II, pages 31, 32 hereof.

5. In the opinion in the *Rowan & Nichols* case, the Court said:

> "For some years the Texas Commission has been engaged in experimental endeavor to devise appropriate formulas for a fair allotment of the allowable production. The commitment of such a delicate task to the administrative process has not escaped challenge in the courts, and at times the challenge has been successful. Compare MacMillan v. Railroad Commission, D. C., 51 F. 2d 400; Constantin v. Smith, D. C., 57 F. 2d 227;

> Peoples' Petroleum Producers v. Smith, D. C., 1 F. Supp. 361; Amazon Petroleum Corp. v. Railroad Commission, D. C., 5 F. Supp. 633." 60 S. Ct. 1024.

Also in the opinion it is said:

> "If the history of proration is any guide, the present order is but one more item in a continuous series of adjustments." 60 S. Ct. 1026.

Neither in the *MacMillan* case, nor in the *Constantin* case, nor in the *Amazon* case, three of the four cases cited in the quotation above, was there any decision on the validity of a proration formula, and the point was not made an issue. Those cases primarily raised the question of the right of the Commission or the military authorities to fix the top allowable in the face of statutory provisions, or to interfere at all with production by complainant. In the *Peoples* case, the fourth and last cited above, the validity of a method of allocation *was* involved and *was* decided. That case, like the one at bar, involved a per-well method of distribution; and the Court declared it to be unreasonable and confiscatory.

Shortly after the decision in the *Peoples* case, the Commission put into effect, in April, 1933, a new order for the field, generally known as the "per well potential order," which uses the same general method of proration now in force. Some of the differences resulting from the order of April, 1933, and the present order are as follows: Under the 1933 order, the top allowable was more than 800,000 barrels, while it is now about 521,500 barrels; in 1933, there were about

9,000 wells, while there are now about 26,000 wells; in 1933, each well was authorized to produce 15% of its hourly potential, while under the order of June, 1939, and the order now in force, the percentage is 2.32%, but actually the distribution is 98% on a per well basis; in April, 1933, an average east side well received 40 barrels per day, an average fairway well about 135 barrels, and an average west side well about 60 barrels, while under the June, 1939, order and others like it, each well is permitted to produce about 20 barrels, while under the September and January orders the spread is slight, but nothing to compare with that resulting from the order of April, 1933, nor was the east side so greatly favored in the order of 1933. (R. 405-7.)

When the order of April, 1933, was put in force, several suits were filed in the Federal Court attacking the validity of the order on various grounds, partly on the ground that top allowable would likely cause waste, but primarily on the ground that the method of distribution gave too much value to mere wells. The court denied preliminary injunction, declaring that the order, under the facts, should be upheld, at least until a hearing on the merits. The cases were never tried on their merits. *Legal History of Conservation of Oil and Gas, A Symposium* (1939), p. 241-242.

Since 1933, approximately 17,000 wells have been drilled in the East Texas Field, and the top allowable instead of going up has gone down; consequently, since 1933 there has been a gradual decrease in the spread

between the wells on good properties and the wells on poorer properties, so that the effect of the per-well potential method of distribution has materially changed, reaching the point, prior to the trial of this case, where each well was receiving substantially the same amount, regardless of oil in place, position on structure, potential, or density of drilling. In a real sense, the allocation formula, reasonably fair under the facts as they existed in 1933, became oppressive under changed conditions.

There are other cases involving proration formulas for fields in Texas. In *Boxrollium v. Smith,* 4 F. Supp. 624 (S. D. Tex. 1933), not cited in the quotation above, a three-judge Federal Court upheld an order of the Commission which distributed allowable about 50% on potential and 50% on acreage. In *Henderson v. Terrell,* 24 F. Supp. 147 (1938), not cited above, a three-judge Federal Court, dealing with proration of gas, upheld a formula allocating production 2/3 on acreage and 1/3 on well potential. The statute as to gas directed the Commission to prevent drainage, which the court declared was "a simple and lawful basis for the action of the Commission." The Court upheld the formula (2/3 on acreage and 1/3 on potential) because it was shown that its effect was to allocate production so that there was no reasonably preventable drainage.

It would appear, therefore, that though the Commission has been involved in litigation with respect to formulas for allocation of production, it has not seen fit to adopt a formula similar in terms or effect to

those which were upheld in the *Boxrollium* and *Henderson* cases or in the cases heard on application for preliminary injunction in 1933. The Commission, instead of adopting a formula similar in effect to one of those upheld by the courts, has adopted for the East Texas Field a formula which, under facts such as have existed for some time, is almost wholly a per-well formula, *such as was declared void* in the *Peoples* case, and which does not reasonably prevent drainage. The *arbitrary* nature of the current program of the Commission arises from its *failure* to make "a continuous series of adjustments" in the light of court decisions and changed facts.

Apparently, this Court, when it decided the *Rowan & Nichols* case, did not have all the facts before it with respect to litigation involving proration formulas. There is nothing in the record in this case, nor in the history of proration litigation, showing that the Commission, with respect to the East Texas Field, has made any serious effort to work out or to use a fair formula in the light of changed conditions; and there is nothing to show that the courts have harassed the Commission in its efforts to write a proper formula. *Legal History of Conservation of Oil and Gas, A Symposium,* pp. 228 ff., published 1939 by the Mineral Section of the American Bar Association.

6. In the *Rowan & Nichols* opinion the Court said:

> "A controversy like this always calls for fresh reminder that courts must not substitute their notions of expediency and fairness for those which have guided the agencies to whom the formulation and execution of policy have been entrusted." (60 S. Ct. 1024.

The record in this case shows that there was no effort on the part of the trial court to substitute its own ideas of fairness for those of the Commission. It made no suggestion as to how the field should be prorated. The trial court found the orders complained of to be unreasonable, confiscatory and discriminatory as to appellee, and simply exercised the judicial function of declaring them to be invalid. It did not attempt to write a new proration order, or even to suggest that the field should be prorated in accordance with any particular formula. (R. 566, 567.)

7. The Court further said:

> "The Commission's experts further insisted that, though much technical progress has been made, estimates of recoverable reserves beneath the surface of a particular tract remain largely an indeterminate venture. * * *." 60 S. Ct. 1024, 1025.

The record in this case clearly shows that while oil in place or recoverable reserves cannot be estimated with absolute accuracy in the East Texas Field, they can be fairly approximated, and that in estimating the *comparative* quantities of oil in place in a given tract and in the field as a whole, the estimate can be made with almost complete accuracy. (R. 169, 170, 193, 577.) In *Brown v. Humble*, also involving the East Texas Field, the Court stated that the amount of oil in place can be determined with reasonable accuracy. That case was decided five years ago. Obviously there has been an advance in the science of estimating oil in place since then. The record in this case

shows that the Commission's engineers, appellee's engineers, and Mr. Buck each made an independent estimate of the oil in place or the net effective oil sand in the vast East Texas Field, and arrived at almost precisely the same result. (R. 80, 192, 248.) Here the experts actually did what the Commmision claimed in the *Rowan & Nichols* case could not be done.

8. In the *Rowan & Nichols* case the Court said that in granting exceptions to Rule 37

> "the Commission has granted exceptions to its general spacing rule on the basis of which investments have been made and wells drilled," and that "not only are the individual interests of the small operators involved, but their effect on the State's economy is an appropriate factor to be taken into account when plans are devised to keep the wells open." 60 S. Ct. 1025.

We do not know what the record in the *Rowan & Nichols* case shows; but the record in this case shows that on hundreds of the small tracts in the East Texas Field *not just one but several* wells have been drilled (see pages 91 and 92, *infra*), and that many larger tracts have been drilled down to a density of 2 acres or less (R. 92); for example, Mr. F. W. Fischer, whose case was tried along with appellee's case, has some 7 wells on a tract of .51 of an acre. (Plaintiff's Exhibit No. 11, p. 44, sent to this Court in original form, offered R. 138, 139.) The trial court held that Mr. Fischer had not shown that he was not getting his fair share, and denied an injunction to him. (R. 565.)

Nearly all wells in the field have been drilled for

more than two years and the investment in them should have been repaid. (R. 239, 586.) Pumping wells, unless producing much water, can be operated at a profit on 5 barrels or less per day, and flowing wells at even less than that. (R. 227, 228, 230, 437, 443, 586.) *There is nothing in the record in this case to show that the wells drilled on small tracts or densely drilled tracts are owned by small operators.*

Furthermore, there is no law in Texas which authorizes the Commission to consider "the individual interests of those small operators" or the "effect on the State's economy" or the "investments (which) have been made," as justification for permitting each well to produce a 20-barrel per day base allowable, or as justification for any method of allocation of production, which causes certain wells to drain oil from less densely but adequately drilled tracts and from tracts having vastly greater quantities of oil in place. Appellee asserts that the Commission has no roving authority and has no statutory mandate as a modern Robin Hood, with instructions to go forth and take from some for the benefit of others, or to redistribute property for the benefit of small operators or for the general good of the State's economy. If no such authority is given to the Commission, then one ground advanced by the Court as supporting the opinion in the *Rowan & Nichols* case does not apply to the case at bar.[7]

[7]This Court in Thompson v. Consolidated Gas Co., 300 U. S. 55-79 (1937) declared to be invalid a statute of Texas and an order of the Railroad Commission of Texas which, the Court said, undertook to provide a market for the operators who had none and whose gas wells were closed down, which order also caused drain-

9. The Court indicated that there was a conflict in the evidence in the *Rowan & Nichols* case (60 S. Ct. 1025), and that the Commission could exercise its power of continuous oversight to give relief against possible confiscation.

The trial court has found here that there is no substantial conflict in the evidence on the issues of unreasonableness, discrimination and confiscation. (R. 565, 587, 590.) Furthermore, the record here shows that appellee, without success, has made repeated efforts over a period of years to obtain relief from the Commission against its unreasonable, discriminatory and confiscatory orders (R. 337, 518, 586), and that appellee has been compelled to resort to the courts in order to protect its property against unreasonable, discriminatory and confiscatory orders. Whatever the record may have shown in the *Rowan & Nichols* case, the Court cannot assume, in the light of the record in this case, that the Commission will grant relief to appellee, because the record shows that it has persistently refused to do so. (R. 337, 518, 586.)

II.

Appellee is the owner of the oil underlying its leases in the East Texas Field; and the Railroad Commission, in distributing the total daily production from the field among the producers, must afford appellee a

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age from the plaintiff's property. This Court said: "Our law presents no more glaring instance of the taking of one man's property and giving it to another * * * and this Court has many times warned that one person's property may not be taken for the benefit of another private person without a justifying public purpose, even though compensation be paid."

reasonable opportunity to recover such oil or its equivalent. The due process and equal protection clauses of the Fourteenth Amendment require the Commission, as nearly as practicable, to protect appellee's property rights; that is, within reasonable limits, to prevent drainage from appellee's property which is not compensated by counter drainage. A Texas statute requiring that allocation be made on a reasonable basis further requires the Commission to respect and protect appellee's property rights.

As the owner of oil and gas leases in the East Texas Field, appellee is the owner of the oil and gas in place under the several tracts of land covered by such leases, subject to the rights of royalty owners. *Stephens County v. Mid-Kansas Oil & Gas Co.*, 113 Tex. 160 (1923); *Texas Company v. Davis*, 113 Tex. 321 (1923); *Brown v. Humble Oil & Refining Company*, 126 Tex. 296 (1935).[8]

Subject to reasonable regulation under the conservation laws for the prevention of waste, appellee is entitled to a reasonable opportunity to recover such oil, or its equivalent. *Brown v. Humble Oil & Refining Co.; Magnolia Petroleum Co. v. Blankenship*, 85 F. (2d) 553 (C. C. A. 5th, 1936). As was said in the *Brown* case:

> "The exercise of the police power under this rule (spacing Rule 37) does not change the rule of

[8]Appellants' brief, p. 37, cites the Brown case as holding the rule of ownership in place applied only to oil *originally* in place. This interpretation is wholly unjustified. The rule clearly contemplates that a person owns as of any given time the oil *then in place* under his land.

property. It merely regulates and controls the way in which his property shall be used and enjoyed. Each person still owns the oil and gas in place under his land, and each still has the right to possession, use, enjoyment, and ownership of the oil and gas produced through wells located on his land, regardless of its origin. The primary rule of ownership is still operative." (Parenthesis ours.)

Appellee is entitled to the present use and enjoyment of its properties along with other operators. It is entitled to recover its fair share of the field allowable currently and presently, along with other operators, and is not required to wait until some future and indefinite date to obtain its oil. *Spann v. City of Dallas,* 111 Tex. 350 (1921); *Sterling v. Constantin,* 287 U. S. 378 (1932).

Nor does the existence of the so-called rule of capture alter or diminish appellee's rights. The rule of capture has often been erroneously referred to as a rule inconsistent with the rule of ownership in place as recognized in Texas. Such references are unsound. The rule of capture in its legal sense is a supplementary, secondary, or incidental rule of convenience designed for protection of the property rights recognized by the rule of ownership in place. It is in no sense a limitation upon the owner's rights under the ownership in place rule or under the proration laws. As was said in *Brown v. Humble Oil & Refining Company:*

"The rule in Texas recognizes the ownership of oil and gas in place and gives to the lessee a determinable fee therein. * * *

"Owing to the peculiar characteristics of oil and gas, the foregoing rule of ownership of oil and gas in place should be considered in connection with the law of capture. This rule gives the right to produce all of the oil and gas that will flow out of the well on one's land; and this is a property right. And it is limited only by the physical possibility of the adjoining land owner diminishing the oil and gas under one's land by the exercise of the same right of capture. * * * *Both rules are subject to regulation under the police power of a State.*" (Italics added.)

Later in the opinion, the Court said (referring to the operation of the rule of capture under the conservation laws):

"The rule of convenience becomes secondary."

When the production of oil is limited by the rules, regulations, and orders of the Railroad Commission issued pursuant to the conservation statutes, the rule of capture merely operates to quiet title in the person who produces oil from wells located on his land. It does not authorize the Commission, by its proration program, to allocate to an operator more than his fair share of the production. The rule of capture has nothing to do with the amount of oil which should be allocated to an operator when the total field allowable is restricted. Hardwicke, *Rule of Capture and Its Implications as Applied to Oil and Gas,* 13 Tex. L. Rev. 391, 416. (June, 1935); Summers, *Legal Rights Against Drainage,* 18 Tex. L. Rev. 27, 41 (Dec., 1939); Part 4, *Hearings Before Sub-committee of the Committee on Interstate and Foreign Commerce* on H. Res.

290 and H. R. 7372, 76th Cong. 3rd Sess., 1940, p. 1479.[9]

The Railroad Commission of Texas is authorized, under the conservation laws of the State as an exercise of the police power, to prevent waste of oil and gas. Pursuant to this power, which is not challenged here, the Commission within reasonable limits may fix the total daily top allowable of oil which may be produced from the East Texas Field. In the interest of private property rights, however, the same statutes which permit the Commission to limit the total daily production of oil, direct it to allocate such total daily production among the several producers upon a *reasonable basis.* The acts of the Commission are also subject to limitations imposed by the Federal Constitution.

The function of the Railroad Commission is twofold. Its acts under the police power to prevent waste of oil and gas, performing such function, as shown by the record in this case, by fixing a daily top allowable for the field. But the Commission is also charged with a duty to protect the correlative rights of the several owners in the field. The one function, then, is primarily in the public interest; the other, for the protection of private property rights.

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[9]In the record of the hearings cited in the text it is pointed out, pages 1479-1480, that the term "rule of capture" is often used with different concepts, thereby frequently causing confusion in discussion unless definitions be given, or unless the context clearly shows the sense in which the term is used. In the record of the hearings, three concepts are stated in which the term is frequently used. Briefly they are: (*a*) the strict legal concept, such as is stated in this brief, which is recognized in the Brown case; (*b*) a condition in which there is no regulation of drilling or production; and (*c*) the antithesis of ownership in place.

In passing upon constitutional limitations upon the power of the Commission, the courts have held that any method of allocation, to be valid, must protect property rights; that is, must afford each owner a reasonable opportunity to produce the oil in place underlying his lease, or its equivalent. *Brown v. Humble Oil & Refining Company; Gulf Land Company v. Atlantic Refining Company,* 134 Tex. 59 (1939). As was said in the *Brown* case:

> "It is now, however, recognized that when an oil field has been fairly tested and developed, experts can determine approximately the amount of oil and gas in place in a common pool, and can also equitably determine the amount of oil and gas recoverable by the owner of each tract of land under certain operating conditions * * *." 126 Tex. 296.

The Court then quoted with approval from the case of *Ohio Oil Co. v. Indiana,* 177 U. S. 190, 202 (1900), as follows:

> "'Hence it is that the legislative power, from the peculiar nature of the rights and objects upon which it is to be exerted, can be manifested for the purpose of protecting all of the collective owners, by securing a just distribution, to arise from the enjoyment, by them, of their privilege to reduce to possession, and to reach the like end by preventing waste'." 126 Tex. 296, 309.

Then, speaking further, the Court observed:

> "This right to control the rate of flow in order to prevent waste also enables the Commission to offset the advantage obtained by one who is given an exception to the spacing rule by limiting his

allowable production to the extent necessary to overcome this advantage. In this way the Commission, by controlling the oil stored in the common reservoir, is enabled to carry out the dominant purpose of preventing waste, and, at the same time, permit each owner to enjoy the opportunity fully to realize upon his estate by developing and recovering his oil and gas." (p. 313.)

Or, as was said in the *Gulf Land Company* case:

"It is the law that every owner or lessee of land is entitled to a fair chance to recover the oil and gas in or under his land or their equivalents in kind." 134 Tex. 57, 71.

A three-judge Federal Court composed of Texas lawyers, in *Henderson v. Terrell,* 24 F. Supp. 147 (W. D. Tex., 1938), involving the proration of gas under the gas proration statute, likewise held that distribution must be made in accordance with property rights, saying:

"* * * * Whenever the legislature imposes lawful restrictions upon the quantity of oil or gas that may be produced, so that thereafter owners may not any longer, under the common-law rule of capture, fully fend for themselves, the duty rests upon the legislature to make provision for the proration and distribution of the allowed amount among the wells in the field, so that no one of those thus limited may take undue advantage of any other. * * *

"The legislature has definitely declared that the wells must be prorated so as to prevent cognizable and preventable drainage, and that in doing so all relevant factors must be taken into consideration. By so declaring it has fixed a simple and lawful basis for the action of the Commission."

In commenting upon the decision in the *Henderson v. Terrell* case, Mr. Summers, in *Legal Rights Against Drainage,* 18 Tex. L. Rev. 45, observed:

> "By this decision the court has done nothing more than apply the principle so often repeated in oil proration and spacing cases, to the effect that where proration and spacing orders are issued for waste prevention, they must protect producers against non-compensated and preventable drainage."

Thus, while the cases have used varying types of language to define a lease owner's property rights, all of such definitions come to this: *a method of allocation to be valid must prevent reasonably avoidable drainage which is not compensated by counter drainage.*[10]

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[10]The proration laws of Louisiana, New Mexico, and Arkansas define a lease owner's property rights and the duty of the administrative agency in substantially the same terms as those used in the Henderson case and in the article by Professor Summers. In the Louisiana law, being Act. 157 of 1940, Sec. 7 (d), it is provided:

"* * * (*d*) Subject to the reasonable necessities for prevention of waste, and to reasonable adjustment because of structural position, a producer's just and equitable share of the oil and gas in the pool (also sometimes referred to as a tract's just and equitable share) is that part of the authorized production for the pool (whether it be the total which could be produced without any restriction on the amount of production, or whether it be an amount less than that which the pool could produce if no restriction on amount were imposed) which *is substantially in the proportion that the quantity of recoverable oil and gas in the developed area of his tract or tracts in the pool bears to the recoverable oil and gas in the total developed area of the pool, in so far as these amounts can be practically ascertained; and to that end, the rules, regulations and orders of the Commissioner shall be such as will prevent or minimize reasonably avoidable net drainage from each developed area (that is, drainage which is not equalized by counter drainage), and will give to each producer*

Such property rights of owners of oil and gas leases have been consistently determined and protected in Federal Courts in numerous cases involving attacks under the Fourteenth Amendment upon orders of the Railroad Commission of Texas. Sterling v. Constantin, 287 U. S. 378 (1932); *Thompson v. Consolidated Gas Utilities Co.,* 300 U. S. 55 (1937); *Amazon Petroleum Corp. v. Railroad Commission of Texas,* 5 F. Supp. 633 (E. D. Tex., 1934); *MacMillan v. Railroad Commission,* 51 F. (2d) 400 (W. D. Tex., 1931); *Henderson v. Railroad Commission,* 56 F. (2d) 218 (W. D. Tex. 1932): *Peoples Petroleum Producers v. Smith,* 1 F. Supp. 361 (E. D. Tex., 1932).

In *Sterling v. Constantin* this Court said:

> "The existence and nature of the complainant's rights are not open to question. And ownership of the oil properties is undisputed. Their right to the enjoyment and use of these properties, subject to reasonable regulations by the State in the exercise of its power to prevent unnecessary loss, destruction and waste, is protected by the due process clause of the Fourteenth Amendment." (287 U. S. 378, 396.

The case of *Thompson v. Consolidated Gas Utilities Company* involved facts quite similar to those now before the Court. There, an order of the Railroad Commission of Texas prorating gas was attacked on

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the opportunity to use his just and equitable share of the reservoir energy. (Italics ours.)

The allocation provisions of similar statutes of other States are quoted in footnote 37 of Part 4, Hearings Before Sub-Committee of the Committee on Interstate and Foreign Commerce on H. Res. 290 and H. R. 7372, 76th Cong. 3rd Sess. 1940, p. 1490.

the ground that it was discriminatory and confiscatory, contrary to the provisions of the Fourteenth Amendment to the United States Constitution. In that case the Court held the proration order to be void because it violated complainant's property rights. The Court said:

> "It is settled that to all administrative regulations purporting to be made under authority legally delegated, there attaches a presumption of the existence of facts justifying the specific exercise. * * * But obviously the proration orders would not be valid if shown to bear no reasonable relation either to the prevention of waste or the protection of correlative rights, or if shown to be otherwise arbitrary." 300 U. S. 55, 69-70.

In numerous cases the State courts have also determined the property rights of an injured party in order to determine whether or not such rights were invaded by orders of the Railroad Commission. *Brown v. Humble Oil & Refining Company; Empire Gas & Fuel Co. v. Railroad Commission,* 94 S. W. (2d) 1240 (1936, error refused); *Railroad Commission v. Bass,* 10 S. W. (2d) 586 (1928); and *Atlantic Oil Production Co. v. Railroad Commission,* 85 S. W. (2d) 655 (1935).

Not only are appellee's property rights guarded against confiscation and discrimination in violation of the Fourteenth Amendment, but they are also protected by the statutes of Texas. Such statutes place definite limitations upon the power of the Commission in allocating the allowable production among operators in the East Texas Field. They provide in part:

"The Commission shall make and enforce rules, regulations and orders for the conservation of crude petroleum oil and natural gas and to prevent waste thereof, including rules, regulations or orders for the following purposes: * * *

"(4) To require wells to be drilled and operated in such manner as to prevent injury to adjoining property." Acts of Texas, 1935, 44th Leg. Reg. Sess., p. 180, c. 76, Sec. 4. (*Art. 6029, Vernon's Ann. Rev. Civ. Stat. of Texas*).

In Section 6 of the Act just cited (Sec. 7, Art. 6049c, *Vernon's Annotated Revised Civil Statutes of Texas*) it is provided:

"In the event any such rule, regulation or order which the Commission may adopt provides for the limitation or fixing of the production of crude petroleum oil or natural gas from wells producing gas only in any pool or portion thereof, the Commission shall distribute, prorate *or otherwise apportion or allocate the allowable production among the various producers on a reasonable basis.*" (Italics ours.)

In the case of *Railroad Commission of Texas v. Houston & Texas Central Railway Co.*, 90 Tex. 340, 354 (1897), the Court held that the orders of the Commission

"* * * * *might frequently be unreasonable and unjust and yet might not amount to the taking of property without proper compensation or without due process of law.*" (Italics ours.)

III.

The trial court having found that the facts are without dispute, and that the orders complained of as to

appellee are discriminatory, confiscatory and unreasonable, and there being no real dispute in the record that the orders as to appellee are discriminatory, confiscatory and unreasonable, the judgment of the trial court should be affirmed.

The trial court has found that under the orders complained of appellee has been discriminated against, and has suffered confiscation and irreparable injury. (R. 585, 588.) Furthermore, the Court found that the orders complained of as to appellee are unreasonable, in that they do not allocate the allowable production in the East Texas Field on a reasonable basis, and are, therefore, violative of the Texas statutes. (R. 565, 588.) It further found that there is no real conflict in the evidence. (R. 565, 587, 590.) This amounted to a finding that there was no substantial evidence in the record to justify findings contrary to those made, and that no reasonable person could have reached a contrary decision as to the facts.[11] When viewed as a whole and properly understood, it seems clear that there is no conflict in the record on these issues, and that the Court should not have made contrary findings.

Even appellants claim there is conflict in the evidence only on a few points. We wish to take up these

[11]In the second Rowan & Nichols case, which was tried along with the case at bar on the same record, the trial court found: "There was no substantial evidence to support the Commission's order and there was no showing made that the Commission had based the order on any finding, and there was no substantial evidence to support a finding upon which the order could be based." (P. 550 of the record in that case now pending on appeal in this Court.)

issues one by one and show from the record, viewed as a whole, that there is no real conflict on those issues.

1. Appellants tried to make it appear that there is conflict in the evidence as to whether it is possible to estimate the oil in place; and by inference they try to cast doubt as to whether appellee owns 14.3% of the oil in place in the field. Sorenson (R. 81-83, Moore (R. 169, 192, 193, 202), and Buck (R. 319, 320, 321) all say positively that recoverable oil in place can be estimated with reasonable approximation, although they admit that it can not be done exactly. Exactness, of course, is not necessary. *Brown et al. v. Humble Oil & Refining Company,* 126 Texas 296, 306, 316 (1935). Moore and Buck testified that while there was a possibility of error, the errors were such that they would apply to the field as a whole to the same extent as they would apply to any particular property; and that in determining the *relative amount* of recoverable oil under any lease as compared with the amount of recoverable oil in the field as a whole the estimate could be made almost free from error. (R. 169, 170, 202, 319, 320.) It is significant that the Railroad Commission, appellee's engineers, and Mr. Buck, separately have estimated the acre-feet of net effective oil sand in the East Texas Field to be practically the same. (R. 192, 320.) Mr. Hudnall, a witness for the Commission, admitted that he, for a long time, had calculated oil in place under various properties in the East Texas Field for various clients, and that leases are bought and sold and taxes are assessed and paid on the basis of such calculations, and

that such estimates are, for all practical purposes, accurate. (R. 429, 430.)

Thus, when the evidence is examined, all witnesses agreed that recoverable oil in place can be estimated with reasonable accuracy. There is no evidence in the record contrary to the testimony of Moore and Buck that *on a comparative basis* the reserves of oil in place can be estimated practically free from error. This is the important thing, because appellee has insisted, without contradiction in the record, that its percentage of the oil in place in the field is 14.3%. Mr. Sorenson testified (R. 81, 82, 83) that not only could the acre-feet of oil sand in place in the East Texas Field be accurately estimated, but that he had made the calculations from the company's records and from the Commission's isopach or sand-thickness map, and that these calculations show 14.3% of the oil in place in the field to be under appellee's leases. No witnesses disputed the fact that appellee's percentage of the oil in place in the field can be determined with almost absolute accuracy, and that 14.3% of the recoverable oil in place in the field is in place under appellee's leases.

2. Appellants in their argument seek to raise a question as to whether appellee's properties in the past have been depleted or drained to the extent shown by the undisputed facts in the record. Strictly speaking, past recovery figures are not of primary importance, except to show as a matter of history what has taken place under prior orders and to indicate what will take place in the future under similar orders. Under the law in Texas, from here on out, appellee is entitled to a reasonable opportunity to recover

the oil *now in place* under its leases; and while its losses by drainage from its leases under prior orders has been extremely great, appellee does not contend that it has the right in the future to make up for prior losses.

However, in connection with past losses, the Court found that appellee had been permitted to produce only about 9.6% of the accumulated production for the field and that it has been allowed to recover from its properties only 11/15 as much per acre-foot of oil sand depleted as the field as a whole has been permitted to produce per acre-foot of oil sand depleted. (R. 578.)

This finding is fully supported by the evidence of both Sorenson (R. 334) and Moore (R. 133, 135, 136, 137), who testified without contradiction that the past net drainage from appellee's leases amounted to the huge total of from 56,000,000 to 64,000,000 barrels. The East Texas Field is like a huge tank. Appellee originally had 14.3% of the oil in place. It has been permitted to produce only 9.6% of the accumulated production. It now has only 14.3% of the remaining oil in place in the field. If its properties had not been drained to an extent far in excess of the amount of oil appellee has been permitted to produce from its leases, appellee's percentage of the remaining oil in place would be considerably more than 14.3%. Its properties are scattered all over the field, and occupy an average or representative position. (R. 85, 121, 122.) Its properties are in the west and east portions of the field and in the fairway. It is obvious that its losses by drainage in the past have resulted

from the fact that it has not been permitted to produce at a rate commensurate with the rate at which other operators have been permitted to produce; and, as a result, its properties have been depleted more rapidly on the average than other properties in the field.

Both Sorenson and Moore testified without contradiction that, assuming the original water table was at 3320 feet subsea, appellee's leases had been depleted or drained to the extent of about 120,000 acre-feet of oil sand. (R. 190, 334.) Moore testified without contradiction that leases of other operators had been depleted to the extent of 790,694 acre-feet of oil sand, while the field as a whole had been drained or depleted to the extent of about 910,720 acre-feet of oil sand. (R. 190.) This indicated a recovery of 1100 barrels per acre-foot from appellee's properties and 1561 per acre-foot from other leases in the field and 1499 barrels per acre-foot from the field as a whole. (R. 334.) *Other operators recovered 40% more oil per acre-foot of oil sand depleted than did appellee.* (R. 190.) *This was caused by the relatively lower allowables given to the properties of appellee.*

On cross-examination, the recovery figures were challenged as being excessive; and Dr. Gardescu, a witness for appellants, said that he had never heard of actual recoveries of 1500 barrels per acre-foot of sand. Sorenson and Moore both testified that the indicated recoveries were excessive; but, without contradiction, explained the high indicated recoveries by showing that actually vast quantities of oil had been produced from a zone about 10 feet thick imme-

diately below minus 3320 feet, the latter being the plane above which no water was originally found. (R. 192, 193, 333.) Taking these facts into account, the actual recoveries from the field as a whole are reduced to a lower figure than 1499 barrels per acre-foot, and within expected limits. (R. 333.) Both witnesses showed that appellee's percentage of the *actual* recovery from the field was no greater than its percentage of the indicated recoveries (R. 193, 329, 334); that other operators in the field actually recovered from their properties at a higher rate than appellee actually recovered from its properties; and as a consequence, appellee's properties suffered drainage of from 56,000,000 to 64,000,000 barrels. (R. 133, 135, 136, 137, 190, 334.) Thus, regardless of what the exact recovery from the field may have been, appellee's leases have been permitted to recover only about 11/15 as much as the average leases in the field. (R. 190, 578.)

These losses have been suffered under orders similar to the order of June 19, 1939. The record shows that orders similar to it have been in effect for the past six years. (R. 408.) However, because of constant drilling and no increase in the top allowable, the average well allowable and the spread between the good and the bad wells steadily decreased until all wells were given substantially the same allowable.

It is significant that while appellants had Dr. Patten, the Chief Engineer of the Commission, on the stand, and had two other witnesses, they did not seek by any one of their witnesses to refute the testimony of Moore and Sorenson, with reference to appellee's

past losses. As a consequence, their testimony stands without dispute in the record. Under the admitted physical facts it could not be otherwise.

3. As to present recovery, appellants virtually admit that appellee is not recovering its fair share of the oil. They purport to dispose of appellee's admitted current loss of 3.13% of the total field allowable by stating that such has nothing to do with "the question of whether or not the Humble's leases are being drained by other operators, but constitute mere juggling with figures." (Appellants' brief, p. 44.) Appellants also take the position that the Railroad Commission is under no duty to allow an operator to produce his fair share currently, but may require him to wait until some future date to secure his oil, though permitting others similarly situated to produce more than their share currently.

2. We have shown that appellee's current ownership of 14.3% of the oil in place in the field is undisputed. Appellee's actual allowable of 9.932% under the June order and 11.17% under the September and January orders is admitted. It would seem that appellee's current loss of 3.13% is clear and undisputed, and appellee is being denied without legal warrant the present enjoyment of its properties. *Spann v. City of Dallas*, 111 Tex. 350, 355 (1921).

The undisputed facts show that appellee's properties are scattered all over the field and occupy an average or representative position (R. 85, 116, 121, 122); and that, considering their position on structure, some are adversely affected and some are aided

by the water drive; however, most of its leases are adversely affected by the water drive. (R. 91, 95, 113, 163, 164, 585.) As a consequence, appellee cannot currently obtain its fair share, unless its properties are permitted to produce currently substantially in proportion to the rate at which the properties of other operators in the field on the average are permitted to produce. (R. 45, 207.) Current avoidable drainage from appellee's properties will necessarily result unless its current allowable is substantially in proportion to its percentage of the oil in place in the field.[12]

[12]Moore testified (R. 164) that if the formula (potential times pressure times acreage times sand thickness) which was applied to 25% of the production under the September and January orders were applied to the field as a whole, appellee's allowable would be 14.6% of the field allowable. Sand thickness, pressures and potentials are the only factors in the allowable program which gave weight to position on structure. Since the appellee's leases are so widespread in the field, its leases in the eastern part of the field would gain almost the equivalent of what its leases in the western part of the field lose by action of the water drive, if the entire field allowable, rather than only 25% thereof, were prorated by use of the factors named. Under the orders complained of, appellee's leases in the west half of the field are not permitted to produce ratably with other leases in the west half of the field, nor are its leases in the east half of the field permitted to produce ratably with other leases in the east half of the field. As a consequence, other operators in the east half of the field reap the benefit of migration of oil from west to east. The oil migrating from west to east simply passes through or across appellee's leases and is produced in a large measure by wells on other properties, because of the fact that comparatively they have much larger allowables.

If appellee were to dispose of all of its leases in the west half of the field, its remaining leases would not then occupy a position representative of the field at all. The remaining leases, being in the east half, would be benefited by the time factor; that is, they would produce longer before being drowned out by water than would the leases in the west half of the field. If appellee were to sell all of its leases in the east half of the field, retaining those

The Court found (R. 565, 583) that the program of regulation complained of does not give to appellee the opportunity to produce currently its fair share, or prevent reasonably avoidable drainage from appellee's properties (R. 588), and that these facts are practically admitted. (R. 565.) There is no evidence in the record to the contrary.

4. Although in their briefs appellants argue that there is a conflict in the evidence as to whether or not, if the September and January orders were contained in force, appellee would ultimately obtain from the field an amount of oil at least equivalent to the oil originally in place beneath its leases, again when the record is considered as a whole, there is no real conflict in the evidence on this point. Appellee admittedly fares worse under the June order than under the September and January orders. Moore testified (R. 145, 184, 194, 195, 206, 207) that he had made a detailed calculation as to the ultimate effect upon

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in the west half, the situation would then be the reverse of that just stated. In either event, it would not be necessary that appellee be given currently an allowable approximately in proportion to its oil in place in order to receive ultimately the oil it owns in place or an equivalent amount. In the first instance, having only east side properties, appellee could be permitted to produce more slowly; while in the second instance, having only west side properties, it would be necessary for its wells to produce more rapidly. Its proper allowable would not, in such event, be that percentage of the field allowable which the oil in place under its leases would bear to the oil in place in the field.

The Commission could use any number of formulas, other than one based upon comparative reserves alone, which would afford to appellee an opportunity to recover its fair share of the oil, both currently and ultimately. Appellee repeats that it does not claim that the Commission *must* prorate the allowable on comparative reserves. It simply says the formula must, without discrimination, allow appellee to produce its fair share.

each of appellee's leases of the September and January orders, if continued in effect during the balance of the life of the field; and that from his calculations appellee's properties in the future would be drained by other operators to the extent of from 45,000,000 to 85,000,000 barrels; that is, appellee would be prevented by that much from producing the equivalent of the recoverable oil now in place under its leases. Appellants tried to make something out of the fact that Mr. Moore made his estimate range from 45 to 85 million barrels. He stated himself that he was doing this in order to be conservative, although he believed that 85 million barrels was substantially a correct figure. (R. 207.) If the lower figure is taken, still this shows how enormous appellee's losses will be. These losses will be higher under the June and the present orders, which are some 98% on a flat per well basis of 20 barrels each. If these future losses are added to the past losses shown on page 43 above, it will be seen that appellee will fail by over 100,000,000 barrels of oil of recovering the equivalent of the oil originally in place under its leases.

Appellants, in trying to show a conflict in the evidence as to relative recovery by appellee, and to show substantial evidence against the finding by the court as to ultimate recovery and injury, rely upon one statement made by Mr. Hudnall, witness for appellants, to the effect that he thought that appellee would ultimately produce its fair share if the September and January orders were continued in effect. ***Hudnall's statement on the point of ultimate recovery under the***

September and January orders was shown on cross examination to be a rank guess, not based on scientific calculations; because he admitted that he did not know how long the field would produce at the rate of 690,000 barrels per day (R. 413); that he had not calculated how much oil each of appellee's leases would produce, nor had he figured how long each of appellee's leases would produce if the September and January orders were continued in effect during the producing life of the field. He also admitted that it was possible to make such calculations. (R. 416, 418.) Moore made them. (R. 145, 206.)

Appellants further assert in their brief that since many of appellee's leases are situated in the fairway it will ultimately obtain its fair share of the oil, because they say that the fairway will be the last part of the field to be flooded.[13] Mr. Hudnall expressed

[13]On pages 58, 61 of their brief appellants contend that the eastern portions of the field will be shorter lived than the fairway due to the possibility that gas may come out of solution there at some time in the future due to loss of pressure. In support of this argument they cited testimony of Dr. Patten on page 359 of the record. There Dr. Patten stated that the leases on the eastern *margin* of the field would have comparatively a short life if the pressure should decline sufficiently that a gas cap is formed. On page 346 of the record Dr. Patten stated that the pressures could be maintained at approximately the present value for six or seven years in the future. At the top of page 359 of the record he stated that if the bottom-hole pressures were substantially decreased, he believed a gas cap would form along the east *edge* of the field "and that the effect of that gas cap, of course, would be to push some of the oil slightly down structure." This is the very flimsy prop upon which appellants base their argument. It wholly ignores the migration of oil to the east side which has taken place for the last nine years and which, according to Dr. Patten, should continue for at least six or seven years longer. (R. 436.) He nowhere suggests that oil in appreciable

the view that this result may follow (R. 394), on his impossible assumption that the field would be produced at the rate of 690,000 barrels per day during the balance of the life of the field. The record shows that the only portion of the east side of the field which has tight sands is a narrow band about 500 feet wide along the eastern margin of the field, except for a small area in the southeastern part of the field where the strip is some wider. (R. 91, 108.) Mr. Hudnall pointed out that there had been some 163 abandonments in this part of the field. (R. 391.) On cross examination, however, he admitted that immediately west of this area having tight sands, the oil sands were from 10 to 20 feet thick and were good oil sands. (R. 428.) He further admitted that the eastern part of the field was 40 to 80 feet higher than the highest portion of the fairway. (R. 416, 427.) All agree that oil is being pushed by the water; that there is regional migration from west to east; and that the water drive has maintained the pressures on the eastern part of the field at a high level, except in the narrow marginal strip mentioned above. (R. 347.) Coupled with this is the undisputed fact that, from the standpoint of water drive, the field is divided into two parts, roughly stated, the west half and the east half, the water underlying the west half. (R. 91, 576.) The water

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quantities will ever be driven from the east side down structure to the fairway. In the meantime, the east side properties will have produced far in excess of the equivalent of their original recoverable reserves. There is no evidence to the contrary. The undisputed evidence shows that a principal reason for loss of pressure in the eastern portion of the field is the high allowable given to east side wells. (R. 380, 428.)

table is gradually rising (R. 91, 195) and will rise more rapidly as the field becomes smaller through forced abandonments on the west side as wells go to water. (R. 427.) The major portion of appellee's leases lie over the water table and, therefore, oil is being driven from them to the east as the water rises. In order of water flooding, the eastern portion of the field will be drowned out last. (R. 116, 186, 195, 258.)

It follows that the water drive will push the oil from under appellee's leases in the west half of the field and in the fairway to enormous areas of thick, permeable sands to the east, which Mr. Hudnall admitted were 40 to 80 feet higher than the highest point in the fairway and had good oil sands, and where no abandonment of wells has taken place or will take place prior to abandonment in the fairway under anything like efficient operations.

When Mr. Hudnall's original statement is viewed in the light of his admissions on cross examination, and in the light of the unquestioned facts concerning the action of the physical forces in the field, the trial court was justified in its view that there was no substance in the claim that appellee in the long run would be able to recover its share of the oil because of the structural position of some of its leases.[14]

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[14] In footnote 30, on page 61, and in footnote 32, on page 63 of appellants' brief, appellants refer to certain testimony of Mr. Sorenson, alluded to on pages 331 and 332 of the record. In the testimony referred to, Mr. Sorenson was testifying in a Rule 37 hearing concerning the area which could be effectually drained by a well, and *was not speaking about allowables.* As stated by Mr. Sorenson: "We were talking about the uniformity of drilling." (R. 332.)

It is no proof that appellee will get its fair share to say that appellee's leases in the eastern part of the field will be benefited by migration of oil from west to east. Appellee's leases in the east half of the field are drilled to an average density of one well to 6.18 acres, these wells being sufficient in number to produce the oil under them if they are given a proper allowable, while other leases in that portion of the field are drilled to an average density of one well to 4.66 acres. (R. 163.) Under the plan of proration used, appellee's leases in the east half of the field are not permitted to produce ratably with leases of other operators. *It does appellee no good for oil to migrate to its leases in the east side of the field if it is not permitted to produce its leases ratably with other operators.* Appellee is placed in the position of losing large quantities of oil by migration from its west-half leases, and not being permitted to produce through its east-half leases anything like the equivalent of the oil that it loses from its west-side leases.

These facts are undisputed in the record, and effectually dispose of any argument of appellants that appellee's leases will benefit in the future. Mr. Moore took all of the facts with reference to the migration of oil from west to east into consideration in making his calculations concerning the losses appellee would suffer in the future under the existing orders. (R. 145, 206, 207.)

Furthermore, appellants in their brief (pp. 47, 48), contend by way of argument that Dr. Gardescu's testimony concerning appellee's future recovery justifies

the conclusion that appellee ultimately will produce its fair share of the oil from the field. Dr. Gardescu's testimony, when tested in the light of the method which he employed in determining what appellee's future recovery would be, clearly demonstrates that appellee could never recover its fair share of the oil from the field. Dr. Gardescu estimated that appellee's leases had been depleted to the extent of 16.82%. (R. 452, 453, 454.) He arrived at the result by dividing 119,000 (acre-feet of depletion from appellee's leases) by 707,700 (original acre-feet of sand under its leases). He then concluded that, since appellee's leases had produced approximately 131,000,000 barrels of oil (R. 116, 187, 190, 329), after having been depleted only to the extent of 16.82%, they would ultimately produce 780,000,000 barrels of oil when depleted 100%. This is a mathematical deduction.

If it is permissible to use such a method in estimating ultimate recovery from appellee's leases, it is equally permissible to use the same method in estimating ultimate recoveries from the field as a whole. The undisputed evidence shows that the field as a whole originally contained about 4,960,000 acre-feet of oil sand (R. 101, 192), and that the field has been depleted to the extent of approximately 910,720 acre-feet. (R. 190.) This indicated a depletion for the field of approximately 18.5%. The field has produced approximately 1,360,000,000 barrels of oil. (R. 115, 136.) If 18.5% of depletion equals 1,360,000,000 barrels, 100% depetion would equal approximately 7,400,000,000 barrels. Under Dr. Gardescu's method, therefore, it

would appear that the field ultimately would produce approximately 7,400,000,000 barrels of oil. Appellee's ultimate recovery under Dr. Gardescu's method would amount only to about 10.5% of the ultimate field recovery (780,000,000 divided by 7,400,000,000). According to Dr. Gardescu's method, therefore, appellee would fall short by 3.8% of the generally accepted five billion barrels estimated ultimate recovery from the field (R. 115, 117) of producing its 14.3% of the oil in place in the field. (14.3-10.5.) This would indicate a total loss by appellee of about 190,000,000 barrels of oil during the producing life of the field. This figure exceeds by about 41,000,000 barrels the highest figure given by Mr. Moore as his estimate of the ultimate losses which appellee would suffer from drainage, these estimates being 64,000,000 barrels in the past and 85,000,000 barrels in the future. (R. 136, 145.)

Of course, the fact should be reiterated that these *indicated* recovery figures are admittedly incorrect. (R. 191, 192, 193, 333, 334.) They are too high. However, if Dr. Gardescu's method were applied on the basis of *actual* recovery figures for the field as a whole and for appellee's properties, still, appellee's ultimate recovery would be the same percentage, that is, 10.5% of the ultimate recovery from the field. (R. 187, bottom of page.) This demonstrates the unreliability of Dr. Gardescu's method and assumptions, and shows the fallacy of his suggestion concerning appellee's future recovery of oil from the field. If it demonstrates anything, it shows that appellee would

fall far short of recovering its fair share under the orders complained of.

What has been said above refers to appellee's losses under the September and January orders, if continued in effect during the rest of the producing life of the field. *Nowhere in the record is there even a suggestion that appellee could ever produce its fair share ultimately under the June order, if continued in effect during the rest of the life of the field; and that type of order is now in force.* The undisputed evidence shows, and appellants admit in their brief, p. 35, that the June order is more drastic in its effect upon appellee than are the September and January orders. Since we have shown the enormous extent of appellee's ultimate losses under the September and January orders, it follows that its losses under the June order and the existing order would be much greater.

5. In their brief appellants state that the basic allowable of 20 barrels per well is necessary in order to prevent premature abandonment of wells. The evidence does not sustain this contention; and there is no real conflict in the evidence on this point. Not a single witness testified that it was necessary to give a 20-barrel minimum to the non-marginal wells in the field. Mr. Hudnall, a witness for the Commission, testified that he had never sought to defend the 20-barrel allocation per well. (R. 431.) At most the evidence shows that the few wells producing an excessive amount of water need a larger minimum allowable than any other class of wells, and that they do not need more than 10 barrels per day. (R. 227, 435, 437,

443.) But this does not begin to justify the application of the 20-barrel basic allowable to other pumping wells and to the flowing wells, all of which, according to the undisputed evidence, can be operated at a profit on an allowable of 5 barrels per day, or less. (R. 227-230-443.) In their brief (pp. 53-54) appellants give the excuse that the Commission does not wish to cut the allowable of good wells down below the amount given to marginal wells. This is not evidence; it is confession and avoidance. There is no evidence in the record to sustain such a statement. We have discussed this matter fully under the heading "Allowable of Twenty Barrels per Well Arbitrary and Not Necessary," on pages 102 *et seq.* of this brief.

We think we have clearly demonstrated that there is no real conflict in the evidence on the issues with respect to which appellants claim that conflict exists. There being no real conflict in the evidence, and the evidence showing and the trial court having found the orders to be discriminatory, confiscatory and unreasonable as to appellee, the judgment below should be affirmed.

IV.

The trial court, after a trial de novo, held that the orders as to appellee were discriminatory and confiscatory, in violation of the Fourteenth Amendment, and were unreasonable, in violation of the Texas statute; hence, if there were a conflict in the evidence, the Court properly performed its judicial function in

resolving such conflict and in holding that the orders were void as to appellee. Such findings being fully supported by the evidence, the judgment of the trial court should be affirmed.

As we have shown in part III of this Argument, there is no real conflict in the evidence concerning the essential facts. Appellants, however, assert that there is a conflict as to some of the facts. We believe we have shown that such conflict does not exist; but, even if it does exist, it is our position that, since constitutional questions of confiscation and discrimination, and the statutory question of reasonableness, are here involved, it was the duty of the trial court to resolve such conflicts. In this case the trial court did properly resolve such conflicts, if any existed.

1. The Trial Was De Novo.

In this case a trial *de novo* was actually held. Three judges, two of them Texans, and each with extended experience in litigation involving the conservation statutes of Texas[15] saw and heard the witnesses, saw

[15]Hon. Samuel H. Sibley, Circuit Judge, Fifth Circuit; Hon. Robert J. McMillan, District Judge, Western District of Texas; and Hon. James V. Allred, District Judge, Southern District of Texas.

Among other cases in which Judge Sibley participated involving problems similar to the problems in this case, were Magnolia Petroleum Co. v. Blankenship et al., 85 F. (2d) 553 (1936), and Rowan & Nichols Oil Co. v. Railroad Commmission, 107 F. (2d) 70 (1939). Among the cases in which Judge McMillan has participated are Texas Panhandle Gas Co. v. Thompson, 12 F. Sup. 462 (1935); Henderson v. Terrell, 24 F. Sup. 147 (1938); Magnolia Petroleum Co. v. Blankenship—no opinion, but see 85 F. (2d) 553; Rowan & Nichols Oil Co. v. Railroad Commission, 28

and examined the charts and maps while they were being explained, took advantage of the opportunity to ask questions, and were able to observe the effect of cross examination and of rebuttal testimony. During the trial, appellants did not suggest that the case be tried otherwise than *de novo;* but now, oddly, appellants say (p. 31, appellants' brief) that the court "had no authority to strike down the administrative orders where the plaintiffs failed to prove the records upon which the orders were based." This is a strange reversal of position; and no Texas authority is cited in support of the statement. It fails to take into account the established procedure for testing the validity of a Railroad Commission order, and the true function of a court in hearing a case of this character.

There was no requirement that the records of the hearings before the Commission be introduced. There is no state statute which provides that the validity of orders of the Railroad Commission of Texas with respect to conservation of oil and gas shall be tested on the record of hearings before the Commission. Indeed, there is no State statute which even requires the Commission to keep a true record of hearings held pursuant to the conservation laws, or to certify a record to any Court for purpose of review. No reported case, State or Federal, involving the unreasonableness, or confiscatory or discriminatory effect, of an oil or gas proration order of the Commission, has been found in which the issues were tried on the

F. Sup. 131 (1939). Judge Allred was formerly Attorney General of the State of Texas and later Governor, and has been intimately acquainted with the problems here involved.

record before the Commission. In each of them the trial has been *de novo;* and in not one of them does it appear that the record of the hearing before the Commission was introduced. It has been held, with respect to a similar review statute applicable to railroads and buses, that the record before the Commission is not even admissible in Court except for purpose of impeachment. *Railroad Commission of Texas v. Houston & Texas Central Railway Company,* 165 S. W. 491, 499 (Civ. App. 1913, application for writ of error dismissed); *Railroad Commission of Texas v. Rau,* 45 S. W. (2d) 413, 415 (Civ. App. 1931, application for writ of error dismissed). It would be proper, of course, to introduce the record before the Commission, if the claim were made that there was *no evidence* before the Commission as a basis for its order, or if there were alleged procedural defects, such as lack of notice and hearing. *Empire Gas & Fuel Co. v. Railroad Commission,* 94 S. W. (2d) 1240, 1244 (1936, error refused).

Furthermore, there is no Federal statute and no rule of the Federal Courts requiring that the validity of an order of a State commission should be tested on the record of the hearing before the Commission. This case was, therefore, properly tried on the evidence introduced in the trial court.

Appellants, in stating in a footnote (p. 29 of their brief) that "where the Railroad Commission has followed established procedure, its orders will not be set aside if reasonably supported by substantial evidence," suggest that the orders themselves contain

recitals which are equivalent to administrative findings, and that if the record in this case contains evidence supporting these findings, such findings should not be disturbed. This view is entirely out of keeping with the function of a court where constitutional issues, and the issue of reasonableness under the Texas statute, are involved. But even assuming there was merit in the point made by appellants, let us examine the recitals made by the Commission in its orders. The June and September orders (R. 477, offered 138, 139), and the January order (R. 487, offered, 138, 139), contain general recitals to the effect that the allowables for the State and the fields therein were fixed for the purpose of preventing waste. But the specific recitals in the June order and those in the September 11 order are in hopeless conflict. The September 11 order recites that, for each well to be allowed to produce its fair share and to prevent waste, the method of allocation should include the factors of potential, acre-feet of sand, and bottom-hole pressure.[16] The

[16]The following recitals apear in the September 11 order:

"Whereas, the Commission, after due notice, held a hearing in Austin, Texas, called for August 16, 1939, relating to the conservation of crude oil and natural gas in the East Texas Field and the prevention of waste thereof, at which hearing the Commission heard extensive testimony on the proper factors which should be included in an equitable distribution of the allowable production between the producing wells in the East Texas Field and regulations necessary for the prevention of waste in said Field, and

"Whereas, the Commission finds from the evidence submitted at its hearings that in order for each producing well to be allowed to produce its fair share of the allowable oil from the East Texas Field, that the method of allocation and distribution of the field's allowable between producing wells in this field should, in order to prevent waste, incorporate a minimum well allowable,

June order and the order now in force make the distribution upon substantially a per-well basis, with only slight weight being given with respect to a relatively few wells to the potential factor. Beside these recitals, there were no fact findings made by the Commission on the questions at issue in this case; and hence, other than the above, there are no administrative findings for a court to review. The only actual findings on the issues involved are those made by the trial court after a trial *de novo*.

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the potential capacity of the wells on each lease, the number of acre feet of oil saturated sand underlying the wells on each tract and the bottom-hole pressure of the wells located on each tract, and

"Whereas, the Commission finds from evidence submitted to it at numerous hearings, including the hearing of August 16, 1939, that the reservoir of the East Texas Field has its energy principally supplied by a hydrostatic drive which encroaches from the west to the east and that only a certain amount of crude oil can be withdrawn daily from the East Texas Field in order to utilize effectively the energy necessary to recover the greatest amount of oil ultimately from the reservoir, and

"Whereas, the Commission finds that in order to prevent waste in said field that the allowable production during the months of September and October, 1939, should not average more than 490,000 barrels per day over a thirty (30) day period, and that not more than 690,000 barrels of crude oil should be produced from the East Texsa Field in any one day during the months of September and October, 1939, and

* * * * *

"It is therefore ordered," etc. (R. 474, offered 138.)

It is noted that although the above order recites that the four factors should be considered to prevent waste and to constitute a fair method of allocation no value is assigned by the Commission to any one of the four factors mentioned. Consequently, it is impossible to say from the recitals in the orders what were the findings which prompted the Commission to write the orders involved in this case.

2. The Function of the Court in Affording A Judicial Review.

a. *Where Constitutional Issues Are Raised.*

Since in this case appellee has directly raised the constitutional question of unwarranted discrimination against it and the confiscation or taking of its property in violation of the due process and equal protection clauses of the Fourteenth Amendment, this is a case in which appellee is entitled to a judicial determination of its property rights and a judicial determination of whether or not those rights have been invaded. *Thompson v. Consolidated Gas Utilities Corporation,* 300 U. S. 55 (1937); *Sterling v. Constantin,* 287 U. S. 378 (1932); *Champlin Refining Company v. Corporation Commission,* 286 U. S. 210 (1931); *St. Joseph Stock Yard Company v. United States,* 298 U. S. 38 (1936). See also Summers *"Does The Regulation of Oil Production Require The Denial of Due Process And The Equal Protection Of The Laws,"* and Dickinson *"Judicial Review of Administrative Determinations, a Summary and Evaluation."*[17] *Rowan & Nichols* case.

A brief review of the cases above cited will show that such was the proper function of the trial court;

[17]The article by Summers was prepared for a meeting of the Section of Mineral Law, American Bar Association, in Philadelphia, September, 1940, and appears in a booklet published by the Section of Mineral Law containing all papers read at the meeting mentioned; and the article by Dickinson was prepared for the Institute on Administrative Law and Procedure at the annual meeting of the American Bar Association, Philadelphia, 1940. Copies of the booklet and of Mr. Dickinson's paper have been filed with the Librarian of the Supreme Court Library.

and that the trial court in this case properly performed its function of affording a judicial review.

The *Champlin* case was the first proration case to reach this Court. It primarily involved the contention that the statutes of Oklahoma and the proration orders issued thereunder were "repugnant to the due process and equal protection clauses of the Fourteenth Amendment and the commerce clause." 286 U. S. 210, 224. The three-judge trial court, after a trial *de novo* where there was much dispute as to the facts, made its findings, resolving the fact issues. This Court said:

> "The evidence before the trial court undoubtedly sustains the findings * * * and they are adopted here." 286 U. S. 210, 232.

We cannot distinguish that case from the case at bar, on the point that the trial court should make an independent determination of the fact issues.

The *Consolidated Gas* case, referred to in the minority opinion of Mr. Justice Roberts in the *Rowan & Nichols* case, is even more in point on the contention that the trial court in the case at bar properly made findings which should be upheld. Indeed, on the facts, the case at bar is stronger, for there were conflicts in the evidence in the *Consolidated Gas* case, and also elaborate findings of fact by the Commission, both of which are absent from this case. The *Consolidated Gas* case, it will be remembered, involved the validity of statutes of Texas and an order of the Railroad Commission of Texas pursuant thereto which limited the production of gas from the Panhandle Gas Field,

and which distributed the allowable among the operators. There were detailed fact findings in the Commission's order. (Pp. 476 and 497 of Record in the *Consolidated Gas* case, Docket No. 89, October Term, 1936.) A three-judge court heard the evidence in a trial *de novo,* made fact findings based on a great mass of conflicting evidence as to the existence of waste, physical facts in the field, reaction of the field while being produced, the effect of the order, and its reasonableness. The Court declared the order to be arbitrary and confiscatory as to the complainants, and beyond the authorized powers of the Commission. Injunction was issued. On appeal, the Commission in its brief filed in this Court, pages 179-187, argued that, in the face of substantial evidence in support of the Commission's findings as to the necessity and reasonableness of its order, the court should have resolved the fact issues in favor of the order of the Commission. In the brief for the Gas Company, pages 90-102, it was argued that the trial court properly made independent determination of the fact issues necessary to dispose of the constitutional issues raised. In an opinion by Mr. Justice Brandeis, without dissent, this Court upheld the action of the trial court, declaring in substance that the findings of fact, *though contrary to those made by the Commission,* were amply supported by the evidence, 300 U. S. 55, 73, and that the order of the Commission was arbitrary, confiscatory and beyond the authorized powers of the Commission, and should be enjoined.

This Court has decided another case from Texas,

Sterling v. Constantin, which appears to be in point and which involved the East Texas Field. Suit was brought by an oil operator who claimed that the Governor and the military authorities, under a declaration of martial law, were controlling the production of the East Texas Field in such manner as to take his property without due process of law. In spite of the great weight to be given to the recitals in the proclamation of a governor as to the existence of facts authorizing a declaration of martial law, a three-judge Federal Court, sitting in Texas, passed on the conflicting evidence and made its independent determination of the facts, holding that the recited grounds for declaring martial law did not exist, and that the officials and officers were without authority to control the production of the wells of complainant. This Court upheld the right of the lower court to make findings of fact, and also upheld the findings which were made. *This Court declared that complainant's right to the use and enjoyment of his oil properties in the East Texas Field, though subject to reasonable regulation to prevent waste, was protected by the due process clause of the Fourteenth Amendment to the Constitution of the United States, and the courts were under the duty to examine the facts in order to determine whether complainant's rights had been invaded.* 287 U. S. 378, 396-7. The analogy to the case at bar is obvious.

The same idea was expressed in the *St. Joseph* case, where the point here under discussion was again directly in issue; and the Court clearly undertook to

settle whatever conflict or confusion existed in the cases. The strong opinion on the point by Mr. Justice Brandeis concurring in the disposition of the case, but for different reasons from those expressed in the opinion for the majority, and the exhaustive review of the cases in both opinions, indicate how carefully the question was considered. In the opinion for the majority by Mr. Chief Justice Hughes, the following language was used:

> "Legislative agencies, with varying qualifications, work in a field peculiarly exposed to political demands. Some may be expert and impartial, others subservient. It is not difficult for them to observe requirements of law in giving a hearing and receiving evidence. But to say that their findings of fact may be made conclusive where constitutional rights of liberty and property are involved, although the evidence clearly establishes that the findings are wrong and constitutional rights have been invaded, is to place those rights at the mercy of administrative officials and seriously to impair the security inherent in our judicial safeguards. That prospect, with our multiplication of administrative agencies, is not one to be lightly regarded. It is said that we can retain judicial authority to examine the weight of evidence when the question concerns the right of personal liberty. But, if this be so, it is not because we are privileged to perform our judicial duty in that case and for reasons of convenience to disregard it in others. The principle applies when rights either of person or of property are protected by constitution restrictions." St. Joseph Stock Yards Co. v. United States, 298 U. S. 38, 52.

It is significant that Mr. Justice Brandeis wrote the

unanimous opinion of this Court in the *Consolidated Gas* case after the decision in the *St. Joseph* case. In the *Consolidated Gas* case he apparently accepted the point as settled by the *St. Joseph* case.

Some years ago Mr. Chief Justice Hughes, in discussing the question whether findings of fact by regulatory agencies should be made or could be made virtually immune to court review, expressed very aptly the probable results if court review on the facts should be a mere formality. He said:

> "The power of administrative bodies to make findings of fact which may be treated as conclusive, if there is evidence both ways, is a power of enormous consequence. An unscrupulous administrator might be tempted to say, 'let me find the facts * * * *I care little who lays down the general principles'.*" (Italics added. 46 Harv. L. Rev. 490.)

But appellants urge that under the holding in the *Rowan & Nichols* case it is now the viewpoint of this Court that the trial court should not have decided the fact issues, thereby resolving the conflicts which appellants claim to exist. The decision in the *Rowan & Nichols* case was based upon the record and issues in that case, and upon the court's interpretation thereof. Inasmuch as this Court in the *Rowan & Nichols* case did not overrule the *Consolidated Gas* case, the *Constantin* case, the *St. Joseph* case and other cases of similar import, we conclude that the Court considered that there were facts in the *Rowan & Nichols* case which would not cause it to be in conflict with the other cases mentioned.

It will thus be seen from any view that is taken of the case, the question whether confiscation and discrimination result from the method of distribution employed by the Railroad Commission, is a judicial question.[18] The Commission's findings, actual or presumed, under such circumstances are not conclusive upon the courts. It is not true, as the Commission contends (appellants' brief, pp. 28-31) that the Court should refuse to disturb whatever program of distribution the Commission may adopt, however unreason-

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[18]It is conclusively shown in this case that the fixing of the top allowable for the field is the act which has to do with waste prevention. The distribution of the field allowable really amounts to a partition of property, and calls for a determination of property rights. It is one thing to hold that the fixing of the top allowable, a waste prevention measure, should be upheld if reasonable minds could reach the same conclusion as the Commission did, and quite another to hold that the Commission must be upheld in its idea of law and of fair partition, even if witnesses should swear that the Commission was being reasonable and was protecting property rights. The Commission is not a court or a part of the judicial system, and it seems that the Texas Legislature could not legally delegate to the Commission the right to pass finally on property rights and to effect a partition. An attempt by the Texas Legislature to give an administrative board a similar right of partition with rsepect to water was held to be unconstitutional. Board of Water Engineers v. McKnight, 111 Tex. 82 (1921). It follows that the Commission has authority to make a virtual partition of oil properties only because, having authority to fix a top allowable for the field to prevent waste, it is necessary to declare how much each operator is authorized to produce.

Surely it is not the law that the courts, in testing the right of an operator under the Fourteenth Amendment, are without right to interfere though the overwhelming evidence, to say nothing of the undisputed evidence, shows that the Commission misinterpreted property rights or else has ignored them for undisclosed reasons, with the result that the method of allocation is unreasonable and denies the equal protection of the laws and results in a taking of property for the benefit of another without justification or adequate compensation.

able, discriminatory and confiscatory it may be, merely because the Commission finds, actually or presumptively, that the method protects property rights. This can not be the law, because the ultimate determination of property rights is a legal or judicial question.[19]

Unless administrative agencies, such as the Railroad Commission of Texas, are to be left entirely free to promulgate and enforce orders which have the effect of taking the property from one citizen and giving to another without compensation, or the effect of discriminating against one citizen in favor of another, the courts must determine the judicial question as to what are the property rights involved and whether in fact there is confiscation or discrimination. In a case of this kind the courts must pass upon the issues of

[19]It may be asserted from the case of South Carolina Highway Department v. Barnwell Bros., 303 U. S. 177, cited in the Rowan & Nichols opinion, that the sole function of the Court in the present case is to determine whether or not there is a rational basis for the orders under attack. The Barnwell case involved a statute of the State of South Carolina prohibiting the use of trucks on the state highways whose width exceeded 90 inches and whose weight, including load, exceeded 20,000 pounds. This statute was challenged under the commerce clause, and the due process and equal protection clauses of the Fourteenth Amendment. The Court held that it was impossible upon the basis of the whole record to say that the legislative act was without basis. In the Barnwell case the authority of the state to make and enforce reasonable regulations to govern traffic on the highway was involved. No private right of an individual was involved, because no one has a private property right to use the public highways in any particular way; and it was entirely proper for the State to regulate the use of the highways which it presumably had constructed and owned; and, furthermore, the state legislature has wider discretion in legislation regulating the use of the public highways than the Railroad Commission has in this case in allocating production in the East Texas Field. This is particularly true in view of the limitations placed upon the Railroad Commission by the Texas statute.

confiscation and discrimination, or else wholly retire from the field of protecting property rights under the Fourteenth Amendment.[20]

If the courts should fail or refuse so to function in such cases, a corrupt, tyrannical or unscrupulous administrative agency could always find a way to obtain sufficient evidence to raise an issue of fact, or to constitute conflicting evidence, or to make it appear that there is substantial evidence to support the order.[21]

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[20]How far afield some are willing and seek to go is illustrated by the argument of Mr. Meyers on pp. 15-19 of his brief for appellant G. A. Sadler. Mr. Meyers in effect takes the position that since the statute has authorized the Railroad Commission to allocate production among owners in the field, the Commission is free to make allocation on any basis it sees fit, and the courts can give no relief against an allocation order however discriminatory, confiscatory, unreasonable or arbitrary it may be, unless the evidence shows conclusively that the method is illegal. That is an amazing doctrine. A discriminatory or confiscatory act of the legislature would not be valid; yet we are told that if the legislature passes a valid conservation act and authorizes the Railroad Commission to administer the act, the Commission can administer the act virtually without let or hindrance, although the legislature has expressly limited the Commission by requiring that its proration orders must be reasonable. Under Mr. Meyers' theory, the Commission, under the guise of making an allocation of production in the East Texas Field, could limit the appellee to one barrel of oil daily on some actual or presumed finding of necessity or expediency; and the appellee could get no relief whatever in the courts or elsewhere, although the appellee could show, as here, that as to it the order is discriminatory, confiscatory and arbitrary, and that it is not necessary to issue such an order for the prevention of waste. Such an untenable contention as this is convincing proof of the absolute necessity that the courts perform their judicial function of reviewing and setting aside Railroad Commission orders that violate the due process and equal protection clauses of the Fourteenth Amendment.

[21]Mr. John Dickinson used the following language in his paper, *Judicial Review of Administrative Determinations, a Summary and Evaluation*, mentioned above:

"Finally, it is thought by many that on judicial review of

It is wholly abhorrent to American institutions for the citizen, who is the victim of confiscation and discrimination, to be left without a remedy in the federal courts by a rule which renders the trial courts helpless in cases where conflicts in evidence exist, much less in cases where conflicts do not actually exist if

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administrative determinations of fact, the substantial evidence rule, as at present formulated and applied, does not allow the courts sufficient scope to correct certain kinds of administrative errors and injustices. The suggestion is that if the rule as to review of constitutional facts laid down in the St. Joseph Stock Yards case were applied to questions of fact generally, ample freedom for the legitimate exercise of administrative discretion would still be preserved, and at the same time the door would be closed against types of administrative arbitrariness which escape the operation of the substantial evidence rule. *In the light of experience, there can be no doubt that where an administrative agency sets out to achieve a certain result, it can usually introduce into the record some evidence which, if taken by itself and apart from other evidence, or which, if interpreted in the light of certain assumptions and theories, can be said to supply a basis for the conclusion reached, whereas if the evidence were considered as a whole, or if the assumptions and theories were subtracted, the conclusion in question would plainly appear to be without sufficient foundation.* 'It is no doubt possible that under the substantial evidence rule, courageously applied, these errors might be corrected, but it is also true that the tendency and effect of that rule is frequently to discourage courts from going far enough to supply the needed correction. As already seen, the rule of the St. Joseph case vests the administrative determination with ample presumptive validity, attaches force and consequence to the mere fact that the administrative agency decided as it did, but lays on the court a mandate to reverse, if, after making all such allowances, it still concludes that the administrative determination must be regarded as clearly wrong. The issue would appear to be one mainly, if not solely, of emphasis, but the difference in emphasis is in practice apt to be sufficiently great to be determining; *with the result that if the substantial evidence rule is not to be perverted into a cloak for ratifying administrative error,* no harm would result from reformulating it into the rule of the St. Joseph case, and thereby permitting the court to reverse a fact determination which after due allowance for the presumption of validity, it concludes on all the evidence is clearly wrong.'' (Italics ours.)

the whole evidence be understood and the credibility of witnesses be passed upon. If such be the rule, it is contrary to the cases heretofore decided by this Court, as we have shown. The protection afforded to property rights, no less than that afforded to personal rights, by the due process and equal protection clauses of the Fourteenth Amendment should not be so lightly cast aside.

There is, indeed, substance in the assertion that the adoption of the substantial evidence rule where constitutional rights of either persons or property are concerned would tend "to be perverted into a cloak for ratifying administrative error." This Court must have had somewhat the same viewpoint, for the rule was rejected in the *St. Joseph* case, and later in the *Consolidated Gas* case where the point once more was squarely at issue. There was no difference of opinion expressed in the latter case.

If this Court, as appellants request, is to undo what it has done, and now announce the substantial evidence rule in this, a case similar to those where such rule has been rejected; or if this Court, as the brief in behalf of appellant Sadler suggests, goes so far as to hold that invalidity of an order of an administrative board, even where constitutional questions are involved, must be *conclusively* shown, or that mere conflict in the evidence forces the courts to uphold the order—then surely this Court will carefully examine the record as a whole before saying that there is as much as a scintilla of evidence, much less any substantial evidence, to support presumed findings by the Commission on fact issues necessary to support

the orders here involved. Surely this Court will give great weight to the findings by the trial court, and to the declaration of that court that there is no conflict in the evidence, and that there is no substantial evidence to support findings *contrary* to those made by the trial court.

b. *Under the Texas Statutes.*

In view of the opinion of this Court on motion for rehearing in the *Rowan & Nichols* case, affirming the long established rule that the federal courts may properly decide questions arising under a state statute when jurisdiction was obtained because of the existence of a federal question, as well as when obtained because of diversity of citizenship, there is here involved the question whether the orders of the Commission are valid under the Texas statute which requires that production be allocated "on a reasonable basis." Such point was at issue in this action, and the trial court, both in findings of fact and in conclusions of law, declared the allocation of production to be void as to appellee because contrary to the provision of the statute. (R. 567, 587, 588.) It becomes necessary, therefore, to discuss the meaning of the Texas statute, for in the opinion on rehearing in the *Rowan & Nichols* case the Court said in substance that no case had been called to its attention holding that the test as to reasonableness under the Texas statute was any different from, or less strict than, the test applicable to the claim that the order was confiscatory or discriminatory, in violation of the Fourteenth

Amendment. This Court also raised the question "Whether the local courts may exercise an independent judgment on what is 'reasonable'." 61 S. Ct. 66.

Appellee asserts that the test of whether an order is reasonable under the Texas statute is different from the test of whether it is confiscatory and discriminatory, in violation of the Fourteenth Amendment, and that the Texas Courts have in effect so held in a case which will shortly be discussed.

Further, appellee asserts that the Texas statute relating to conservation merely places the burden of proof upon a person attacking such an order, and does not impose upon him the burden of showing unreasonableness or invalidity on any other ground beyond a reasonable doubt, or by evidence that is not conflicting, or even by the great preponderance of the evidence.

(1) History and Meaning of "On a Reasonable Basis."

The first Act which specifically authorized limitation of the allowable for an entire pool and provided for proration of that allowable was passed in 1931. The pertinent part of that Act read as follows:

> "* * * such order shall be made in such manner as to distribute, prorate or otherwise apportion such production or adjustment among the wells committing such waste or contributing thereto as the facts justly and equitably require." *Acts of Texas* 1931, 1st Called Sess. sec. 7, c. 26, p. 46.

About a year later, the Conservation Act was amended and for the first time the language "on a reason-

able basis" appears. The applicable portion of that Act read as follows:

> "* * * the Commission shall distribute, prorate, or otherwise apportion or allocate, the allowable production among the various producers on a reasonable basis." *Acts of Texas,* 1932, c. 2, sec. 5, p. 3.

In the Act of 1935 relating to oil and gas, which Act is still in force, the exact language just quoted was reenacted. *Acts of Texas,* 1935, c. 76, sec. 6, p. 180.

It is reasonably certain that the legislature, by using the language "on a reasonable basis," had in mind the provisions of earlier statutes relating to orders of the Railroad Commission of Texas applicable to railroads, as well as to the interpretation given to those statutes by the Supreme Court of Texas. The Act of 1891, which authorized the Railroad Commission of Texas to regulate railroads, provided for judicial tests of the validity of orders of the Commission. A portion of this statute became Article 4566 of the Revised Civil Statutes of ~~1925~~ 1895, reading in part as follows:

> "* * * the burden of proof shall rest upon the plaintiff who must show that the * * * act or charges complained of are *unreasonable* and unjust to it or them." (Italics ours.)

Not very long after the statute as to railroads was passed, a case reached the Supreme Court of Texas, where the issue was squarely presented whether an order of the Commission could be unreasonable unless it was also confiscatory. The Court in *Railroad Com-*

mission of Texas v. Houston and Texas Central Railway Company, 90 Tex. 340, 353 (1897), held that the legislature intended by the use of the word "unreasonable" to give the courts the right to declare an order void as being unreasonable whether or not it was at the same time confiscatory. The following language appears in that opinion:

> "We know of no decision of any court which has defined either 'unreasonable' or 'unjust' to mean that the act so characterized is the taking of properety without proper compensation or without proper compensation or without due process of law. It is true that the courts have established the rule that the reasonableness and justice of rates fixed by the legislature, or by a commission empowered by it so to do, are ordinarily questions committed to the discretion of those bodies, and not subject to revision by the courts, but in such cases the law did not authorize any revision of such action by the judicial department. It has been generally held, especially by the Supreme Court of the United States, that the action of the legislature of a State or of a commission created by it, in fixing rates of transportation, would be revised and would be set aside and annulled, when it violates the constitutional right of the carrier to that degree that it amounts to a taking of property without proper compensation or without due process of law. But in doing so, the courts have not revised the exercise of discretionary power on the part of the legislature or the commmission, but it is an interference on the part of the judiciary to protect parties against a violation of the Constitution of the United States or of the State, whether it be in making or enforcing the law. It has not been held that every rate, rule or regulation which does not violate the

Constitution is reasonable, but that extreme degree of unreasonableness which confiscates property gives jurisdiction to the court. If our statut(has not changed the law, the same test must be applied in this case.

* * *

"The test to be applied to every such decision is, that it shall not be unreasonable or unjust to such railroad company or other person complaining. The great number of subjects to which this action may apply, and the fact that it may embrace all or any one of them, and may be instituted by any person interested, for any cause which will show it to be unreasonable, manifests an intention on the part of the legislature to establish a much more liberal rule than previously existed upon this subject. The decision made in establishing rates, classifications, rule, charge, orders or other regulation, *might frequently be unreasonable and unjust, and yet might not amount to the taking of property without proper compensation, or without due process of law.* Indeed, as to some persons who might be affected, and in the performance of some of the acts enumerated, the property would not be taken at all, and therefore the test which the Attorney General would apply could not be applicable." (Italics ours.)

The case just cited and the rule announced therein have not been modified on the point under discussion. What was said in the quotation above was reaffirmed, with the point at issue, in two later cases by the Supreme Court. *Railroad Commission of Texas v. Weld & Neville,* 96 Tex. 394, 403 (1903), and *Gulf, Colorado & Santa Fe Railway Company v. Railroad Commission of Texas,* 102 Tex. 338, 353 (1908).

It has been accepted as settled in Texas that under

the railroad statute the Commission is restricted in its powers beyond the restriction which is imposed by the Fourteenth Amendment; and it is also settled that the courts have greater freedom in striking down an order as being unreasonable than they would have to strike down an order as being confiscatory.

In the light of the history of the statute as to railroads, including the burden-of-proof provision which will shortly be discussed, it is reasonable to presume that the statute as to railroads, including judicial interpretation thereof, was the model for the provision in the statutes as to allocation of oil production where the Commission was directed to allocate production "on a reasonable basis." Although no appellate court in Texas has decided a case involving allocation of oil in a field in which the meaning of the language "on a reasonable basis" was directly involved, it has been decided, as pointed out in part II, p. 34 of this brief, that an order of the Commission must respect property rights; and it is submitted that no order is reasonable which fails to protect property rights, and that allocation is not "on a reasonable basis" which is unreasonably discriminatory and arbitrary, whether or not it results in actual confiscation.

(2) History and Meaning of Provision as to Burden of Proof.

The first provision for a court review of orders promulgated under the conservation statutes was passed in 1929, the last sentence of which read as follows:

> "In all trials under this section the burden of proof shall rest upon the plaintiff." (Acts of 1929, c. 313, sec. 6, p. 694.)

The phraseology was changed slightly in 1931 and 1932. Acts 1931, 1st Called Sess., sec. 8, c. 26, p. 46; Acts 1932, 4th Called Sess., Sec. 8, c. 2, p. 3. In the 1935 act there was a provision with respect to burden of proof which is still in force, reading as follows:

> "In all such trials, the burden of proof shall be upon the party complaining of such laws, rule, regulation or order; and such laws, rule, regulation or order so complained of shall be deemed prima facie valid." (Acts 1935, c. 76, Sec. 14, p. 180.)

Let us now trace the obvious history of the provision as to burden of proof in oil-conservation cases.

The burden-of-proof statute in oil-conservation cases was evidently modeled upon an earlier statute relating to orders of the Railroad Commission of Texas involving railroads. The legislature not only had the railroad statutes before it, but also the legislative and judicial history of those statutes which will now be sketched. The Revised Civil Statutes of 1895 contained Article 4566, which read as follows:

> "In all trials under the foregoing authority, the burden of proof shall rest upon the plaintiff who must show by *clear and satisfactory evidence* that the rates, regulations, order, classification, act or charges complained of are unreasonable and unjust to it or them." (Italics ours.)

The courts held that the use of the language "clear and satisfactory evidence" imposed a very heavy

burden on the plaintiff, virtually requiring him to show conclusively or beyond a reasonable doubt that the order of the Railroad Commission was unreasonable. *Railroad Commission of Texas v. Galveston Chamber of Commerce,* 105 Tex. 101, 115 (1912). The burden so imposed was so great that the legislature in 1925 amended the burden of proof statute by eliminating the words "clear and satisfactory evidence." The amended provision appeared as Article 6454 of the Revised Civil Statutes of 1925, which is still in force, and which reads as follows:

> "The burden of proof shall rest upon the plaintiff to show the rates, regulation, order, classification, act or charges complained of are unreasonable and unjust as to it or them."

The effect of the amendment of the statute was directly involved in the case of *Railroad Commission of Texas v. Houston Chamber of Commerce,* 124 Tex. 375 (1935). In that case, the Commission of Appeals, in an opinion adopted by the Supreme Court, said:

> "On the question of burden of proof required by statute, when an order of the Railroad Commission is attacked directly, the statute (Art. 6454, Rev. Stat., 1925) now reads: 'The burden of proof shall rest upon the plaintiff to show the rules, regulations, orders, classifications, acts or charges complained of are unreasonable and unjust to it or them.'
>
> "The codifiers of the 1925 revision left unchanged Article 6658 of the Rev. Stat., 1911 (which in turn was Article 4566 of the Rev. Stat., (1895) on the subject, except the omission after the word 'show' of the words 'by clear and un-

satisfactory evidence;' *under the statute now in force the controversy must therefore be determined, so far as the 'burden of proof' is concerned, by the same rules governing ordinary civil cases.*" (Italics ours.)

The case under discussion has not been overruled or modified with respect to the holding as to the burden of proof.

The provisions of the statutes with respect to oil and gas conservation orders, merely providing that the orders are prima facie valid, and that the burden of proof is on the plaintiff, were all passed after the legislature in 1925 had changed the railroad statute, thereby restricting the powers of the Railroad Commission of Texas, and thereby giving greater freedom to the courts in annulling orders of that Commission. It is quite significant that the statute as to burden of proof in conservation cases which is now in force was passed in April, 1935, about three months after the decision by the Supreme Court of Texas in the *Houston Chamber of Commerce* case. This was in January, 1935, while the legislature was in session. It is not fanciful to insist that the legislature had in mind the unsatisfactory experience under the old railroad statute providing for judicial review of orders of the Railroad Commission of Texas; and that it was fully cognizant of the enormous power given under the original statutes to the Commission by making its orders almost free from court review, by reason of the extraordinary burden of proof which was imposed upon a person attacking the validity of its or-

ders. It is almost a certainty that the legislature, having before it the history of litigation in railroad cases, and by writing the burden-of-proof provision and the reasonable-basis provisions in the oil-conservation statutes, intended to *restrict* and *limit* the *Commission* and to *give greater freedom to the courts,* to the end that a person who was affected by the orders of the Commission would have protection by court review which would be more than a mere formality.[22]

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[22]In footnote No. 2, on page 29, of their brief, appellants referred to the case of Gulf Land Co. v. Atlantic Refining Co., and quote certain language with reference to the function of the court in reviewing an order of the Railroad Commission of Texas, indicating that the court will consider only whether the action of the Commission is reasonably supported by substantial evidence. That case involved the validity of a permit issued by the Commission as an exception to its spacing Rule 37, and did not involve allocation of production. There was no dispute as to the facts; and the court held, as a matter of law, that the permit granted was invalid. The quotation referred to was purely an ill considered dictum. The only citation is "34 Tex. Jur., p. 712, sec. 11, and authorities there cited." The section of Texas Jurisprudence cited by the Supreme Court relates to railroads and public utilities, not the oil-conservation statutes; and the text is largely supported by cases decided under the old railroad statute which existed prior to the amendment in 1925. The cases simply are not in point. Moreover, in considering Rule 37 cases, there is no statutory requirement as to reasonableness as there is in a case, such as the case at bar, involving the validity of an order allocating production.

The Supreme Court of Texas has never decided an oil-proration case, and has never been called upon to decide the effect of the reasonable-basis provision or the burden of proof cast on a plaintiff in a case involving allocation of the allowable for a field. In the Brown case, which involved the validity of a well-drilling permit, the court by language considered to be dicta, not supported by citations, said that an order of the Commission granting or denying a permit to drill a well should not be set aside unless "clearly illegal, unreasonable, or arbitrary."

In another case, also a well-permit case, it would appear from language likewise considered dicta that no extraordinary burden

The Texas statutes relating to conservation of oil and gas not only mean that the Commission is not authorized to allocate production on an unreasonable basis, whether or not confiscation takes place by the method of allocation; but they also mean that the person attacking the validity of an order is entitled to a real judicial review. The statutes mean that the case involving the validity of an order of the Commission under the conservation statutes must be tried as any other civil action; and although the order is *prima facie* valid and the burden of proof is upon the plaintiff, the burden which exists is no more than that which exists in an ordinary suit between private persons. Under the Texas statute, therefore, it is the function of the Court to resolve the conflicts, if any, in the evidence, and to make "an independent determination on what is reasonable"; but the Court should, of course, impose upon plaintiff the statutory burden of proof, and should not undertake to write a proration order for the Commission. *Brown v. Humble Oil & Refining Company,* 126 Tex. 296, 316. The Court should make its own findings upon the evidence adduced at the trial; and these findings, if supported by substantial evidence, should be upheld by an appellate court.

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of proof was required before a court should set aside an order. Railroad Commission v. Magnolia Petroleum Co., 130 Tex. 484, 491 (1937).

In all three cases referred to, the Supreme Court of Texas held that there was no dispute as to the facts or that as a matter of law no permit should have been issued. It follows that the meaning of the burden-of-proof statute was not involved in any one of them, nor was the meaning of the language "on a reasonable basis" involved.

3. Findings By Trial Court Fully Supported By Evidence.

Should the Court take the view that there is conflict in the evidence on some of the issues, the trial court performed its judicial function under the Fourteenth Amendment and under the Texas statute of resolving such conflicts. The trial court admittedly had jurisdiction because of the existence of the Federal questions involved; and having once taken jurisdiction, it had the right to decide all issues involved, whether they arose under the Fourteenth Amendment or under the State statute. Since the findings of the Court are fully sustained by the evidence, it appears that the judgment should be affirmed.

V.

The evidence in this case clearly shows that the orders complained of as to appellee are discriminatory and confiscatory, in violation of the due process and equal protection clauses of the Fourteenth Amendment, and are unreasonable, in violation of the Texas statute. In view of the restricted field allowable, the large number of wells, the varying densities to which wells are drilled, the striking variances in the amounts of oil in place under the several properties, and the longer life of most leases in the eastern portion as compared with the life of leases in the rest of the field, the use of the base allowable of twenty barrels necessarily renders the orders complained of discriminatory, confiscatory and unreasonable as to appellee, is wholly arbitrary and unnecessary, and

bears no substantial relation to the prevention of physical waste.

From what has been said in parts III and IV of this argument, we believe it appears that the judgment below should be affirmed. But in all events, a careful consideration of the physical facts in the field, the extent and location of appellee's properties, the amount of oil it has in place in the field, the effect of the orders complained of upon appellee, a study of the maps and exhibits offered, and of the testimony of the witnesses, both on direct and cross examination, and a consideration of the record as a whole, will show in a convincing way that the orders complained of as to appellee discriminate against it, take its property without compensation and are wholly arbitrary and unreasonable. Viewing the record as a whole, there is no room for reasonable doubt and no basis upon which reasonable minds could differ as to the discriminatory, confiscatory and unreasonable character of the orders complained of. An examination of the whole record will likewise show that the method of allocation complained of bears no reasonable relation to the prevention of physical waste. We shall now make a somewhat detailed examination of the essential findings of the court and of the evidence sustaining them in order to demonstrate the correctness of the statements just made.

1. Appellee's Property—Its Oil In Place.

The trial court found that when the field was dis-

covered appellee owned 14.3% of the acre-feet of net effective oil sand, and that it still had under its leases at the time of trial at least 14.3% of the remaining recoverable oil in the field. (R. 577-578.) The average thickness of the net effective oil sand under appellee's leases was originally 48.29 feet, while the average thickness under the field as a whole was 38.78 feet. (R. 577.) This accounts for the fact that appellee's percentage of the oil in place is in excess of its percentage of the surface acreage in the field. Appellants do not deny that appellee is the owner of the oil in place under its leases, and do not deny that it is entitled to a reasonable opportunity to produce it.

The above findings are established by the uncontradicted testimony of Mr. Sorenson (R. 80-81), and of Mr. Moore (R. 132.) Their testimony concerning appellee's percentage of the original acre-feet of net effective oil sand in the field is borne out by the Commission's isopach or sand-thickness map introduced in evidence by the appellee as its Exhibit No. 4 (offered, R. 77), the original of which accompanies the record. It is significant that while the appellants had their own Chief Engineer, Dr. Patten, and two other witnesses on the stand, they did not in any way challenge or seek to disprove the testimony of Mr. Sorenson and Mr. Moore to the effect that appellee has under its leases 14.3% of the oil in place. Their testimony is undisputed in the record.

2. Effect Of Orders Upon Appellee.

The trial court found that in the past appellee has

been permitted to produce only about 9.6% of the accumulated field allowable, or only about 11/15 as much oil per acre foot of the oil sand depleted as the field as a whole has been permitted to produce per acre-foot of oil sand depleted. (R. 578.) Under the June 19 order, appellee was permitted to produce only 9.932% of the field allowable. (R. 580.) Its allowable should have been at least 44% higher than it was under the June order. (R. 580, 581.) This amounts to about 22,800 barrels per day. Under the September and January orders, appellee was permitted to produce only about 11.17% of the field allowable. Considering oil in place and position of appellee's leases on structure, appellee is currently deprived of opportunity to produce 3.13% of the field allowable. (R. 583.) This amounted to some 29% of its scheduled allowable, or 21,600 barrels per day less than its fair share. (R. 143, 583.)

These findings are supported by the testimony of Mr. Moore (R. 142-144) and his testimony is not disputed in the record.[23]

3. The Evidence Shows The Orders Are Discriminatory And Confiscatory.

a. *Evidence Showing Discrimination.*

According to the court's findings, the orders complained of do not afford equal protection of the laws,

[23]The statement of appellants on page 52 of their brief that appellee is complaining only because it is not getting its fair share "of the increase in the production resulting from regulation" is not a correct statement. Appellee is entitled to produce its fair share of all the oil produced from the field.

being highly discriminatory against appellee and in favor of other operators in the field, without justification. (R. 582, 585.) The orders *uniformly* discriminate (1) in favor of densely drilled tracts *in all parts of the field* against adjacent tracts less densely drilled, and (2) in favor of tracts having small reserves and the thin sand areas as against tracts having far greater reserves and areas where the sand is thick. The record is replete with evidence showing in a striking, almost startling, way how the orders complained of discriminate against appellee and favor other operators in the field.

(1) *Discrimination is shown in several of the appellee's exhibits offered in evidence.* Particular reference is made to appellee's Exhibit 14 (R. 503, offered R. 153), 15 (R. 504, offered R. 153), 16 (R. 507, offered R. 153), 17 (R. 508, offered R. 154), and 18 (R. 509, offered R. 155). Exhibits 14, 15 and 16 show how the orders complained of discriminate against leases in any part of the field where wells are widely spaced as compared with neighboring leases where the wells are densely drilled. Exhibits 17 and 18 show that the allowable production allocated to wells on thin sands, as compared with the allowable production allocated to wells on thick sands, discriminates in favor of the former and against the latter, and further illustrate how the orders in fact give the east side properties as much production in proportion to acre-feet of oil in place as they give to the west side properties, contrary to the Commission's representation that these orders take care of the time element by al-

lowing the west side to produce at a faster rate tha
the east side in proportion to oil in place. These e
hibits are summarized on pages 151 to 155 of th
record.

On the basis of comparative allowables per day pe
100 acre-feet of net oil sand, it is shown that other o
erators are permitted to produce from 3.6 to 24.1 time
more than appellee in Exhibit 14, from 1.3 to 35 time
more than appellee in Exhibit 15, and from 3 to 1
times more than appellee in Exhibit 16. Exhibits 1
and 18 show that comparing wells on approximatel
5-acre tracts, the allowable production per day pe
100 acre-feet of sand to wells on the west and eas
sides of the field is about 5 times greater than t
wells in the fairway. This same fact is graphicall
shown on appellees' Exhibit 19 (offered R. 157), th
original of which has been forwarded with the record
A glance at Exhibit 19 will show that the allowable
per 100 acre-feet of sand per day are in inverse rati
to the sand thickness and the oil in place, and tha
high allowables are given to operators who have thi
sands and very little oil, while relatively low allowable
are given to operators who have thick sands and grea
quantities of oil in place. This disadvantage in favo
of operators in the fairway is much more strikin
when compared with the allowables given to well
drilled to a greater density than 5 acres per well i
the east and west portions of the field.

Appellee's Exhibits Nos. 20 and 21 (offered R
160), 22 and 23 (offered R. 161), and 24 and 25 (of
fered R. 162) also will show at a glance how the or
ders discriminate against the appellee and in favor o

other operators. The originals of these exhibits were forwarded with the record. The inequalities in the instances shown are almost fantastic. (R. 160-162.) For example, Exhibit 23 shows that appellees' Peterson lease will be permitted to recover in comparison, with the Hamilton Smith-Culp lease in the ratio of 8.35 to 4910.

(2) *The discriminatory effect of the orders is further shown in a striking manner when the allowable for one 5-acre tract with one well is compared with the allowable of another 5-acre tract adjoining with five wells on it.* Under the September and January orders, a 5-acre tract with five wells on it on the west side of the field will be allowed five times as much production as an adjoining 5-acre tract with one well on it. (R. 157, 584.) A 5-acre tract with five wells on it in the fairway will be permitted to produce three times as much as an adjoining 5-acre tract with one well on it. (R. 158, 584.) A 5-acre tract with five wells on it in the east side of the field will be permitted to produce five times as much as an adjoining 5-acre tract with one well on it. (R. 158, 159, 584.)

(3) *The discrimination is again vividly shown when the following table is studied showing that the Commission has permitted operators to drill several wells on each of hundreds of small tracts, and by the use of the 20-barrel base allowable, has given to such tracts a disproportionately large share of the field allowable.* An analysis of appellee's Exhibit No. 16 (R. 507, offered R. 153) shows:

159 tracts (individual acreage between .01 and .40), totaling 98.12 acres, have 448 wells—an average of almost 3 wells per tract.

169 tracts (individual acreage between .50 and .99), totaling 318.5 acres, have 436 wells—an average of between 2½ and 3 wells per tract.

236 tracts (individual acreage between 1.00 and 1.49), totaling 751.45 acres, have 631 wells—an average of almost 3 wells per tract.

271 tracts (individual acreage between 1.50 and 2), totaling 1,466.46 acres, have 829 wells—an average of between 2½ and 3 wells per tract.

Thus the 835 tracts embracing only 2634 acres have 2344 wells, or about one well per acre. Compare this with the appellee's 2547 wells (R. 82) on 14,656 acres (R. 79), or one well to 5.8 acres, such wells being adequate to produce the oil in place efficiently and without waste. (R. 146, 585.) These small tracts, embracing only 2634 acres, are permitted to produce two-thirds as much oil per day as appellee is permitted to produce from its 14,656 acres.

These small tracts have 1509 wells more than one well per tract; and, solely because they have these additional wells on them, the tracts are permitted to produce 30,180 barrels daily through operation of the 20-barrel base allowable alone. This amounts to 4.36% of the field allowable, which of itself is more than would be required under the September and January orders to enable appellee currently to produce its fair share; for appellee would need only an additional 3.13% of the field allowable, or 21,600 barrels per day, under the September and January orders, in order to receive its fair share.

The Court should bear in mind that the 835 tracts above mentioned *are only those tracts having less than two acres each.* Moreover, there are a great number of other small tracts, having more than two acres each,

as well as many large tracts, which have been very densely drilled. (Appellants' Exhibit 10, R. 550, offered 363.) The enormous allocation given to wells on these groups of densely drilled tracts, be they large or small, explains in large measure why appellee's leases suffer avoidable and unnecessary drainage under the orders complained of. The statement in appellants' brief, page 64, that the densely drilled tracts have "very little influence on the allowables granted to other wells because there are so few wells drilled on small tracts" is wholly and obviously incorrect.

(4) *The discrimination shown takes place all over the field; that is, it takes place in the western portion, in the fairway, and in the eastern portion.* Discrimination must inevitably result from the use of the 20-barrel per well base allowable because of the arbitrary variances in the densities to which tracts are drilled throughout the field (R. 144, 579, 583, 584),[24] and because of the sharp variations in the amount of oil in place under a given number of acres in the west third or east third of the field, as compared with the fairway. (R. 144, 156, 583, 584.) This discrimination is further accentuated by the fact that oil is being driven up-structure from the west and across the fairway to the east third of the field. (R. 91, 113, 163, 584.) This process has been going on for about nine years and will continue to go on (R. 391), because the eastern portion of the field is some 40 to 80 feet higher

[24]See original maps of the East Texas Field, appellee's Exhibits Nos. 1 (offered R. 74), 2 (offered R. 75), 3 (offered R. 76) and 4 (offered R. 77). They will give a good idea of the varying densities to which wells are drilled all over the field.

than the highest point in the fairway (R. 416), and 180 feet higher than the west side. (R. 393.)

It is the sum total of the discriminations shown that results in the over-all discrimination against appellee. These discriminations also inevitably result in the confiscation which appellee suffers.

b. *Evidence Showing Confiscation.*

The trial court found:

> "The program of regulation outlined above (that represented by the orders complained of) results in the taking of plaintiff's property and giving it to others without any compensation and without any reasonable necessity. Plaintiff is deprived of a reasonable opportunity to produce currently a very substantial quantity of oil which it would be entitled to produce under a proper method of regulation. The loss to plaintiff under such a program amounts to a very large figure daily and will probably amount to an enormous figure over a period of years if the program be continued." (R. 586, 587.)

The Court further found that if appellee were permitted to drill additional wells on its property, and if it were to do so, it would be mere speculation, to say that the allowable would be materially increased, for it is reasonably certain that other operators would likewise be given permits to drill, and the result would be nothing more than further useless expenditure for wells with little or no relative change in the distribution of the allowable so far as appellee is concerned. The Court further found that since appellee already has enough wells to produce efficiently its oil, confiscation would result in the event it be required to drill

additional wells as a prerequisite to obtaining its proper allowable. The Court, therefore, concluded that the orders complained of as to appellee do not apportion or distribute the allowable production for the field on a reasonable basis, and are arbitrary, confiscatory, discriminatory and unreasonable, and deny to appellee a reasonable opportunity to recover its fair share of the oil ultimately, much less within a reasonable time, resulting in a daily loss of many thousand barrels of oil worth many thousand dollars. (R. 587.) The Court further found that it was not necessary to prescribe and enforce such a program of regulation against appellee in order to prevent physical waste of oil or gas, or for any other reason. (R. 589.)

(1) *That appellee's leases have suffered severe drainage under orders in effect in the past is shown by the undisputed testimony of both Sorenson and Moore.* Orders employing the principle of proration applied in the June 19 order were in effect for the field for about six years. (R. 387, 388.) The undisputed testimony shows that while appellee at all times had 14.3% of the oil in place (R. 81, 83, 85, 102, 132, 133), it was permitted to produce only 9.6% of the accumulated field allowable. (R. 132.) Mr. Moore testified that considering the extent to which appellee's properties had been depleted in comparison with the amount of oil it had been permitted to produce, appellee has suffered a net drainage of about 64,000,000 barrels. (R. 133, 136, 137.) He further showed that other leases in the field had been permitted to recover

about 40% more per acre-foot than had appellee's properties. (R. 190.) Sorenson showed that on one basis of calculation appellee's properties had suffered a net drainage of about 56,000,000 barrels, by reason of the fact that other properties in the field had been permitted to recover at a much more rapid rate per acre-foot of oil sand depleted than had appellee. (R. 334.)

It is significant that the appellants' witnesses made no effort to refute this testimony, although appellants' expert witnesses were fully acquainted with the field and its producing history, and presumably with appellee's properties.[25]

The consideration of what took place in the past is important primarily because it shows as a matter of history how the kind of orders complained of worked to the disadvantage of appellee. From past experience, we are justified in drawing a conclusion as to what may happen in the future under orders of similar effect.

(2) *The fact that appellee is suffering present injury under the orders complained of "is clear, practically admitted," according to the trial court.* (R. 565.) The record is clear that appellee presently owns 14.3% of the oil in place. (R. 83, 84, 132.) Appellants offered no witnesses to refute this fact. Furthermore, the record shows that appellee's leases are located all over the field and occupy an average or representative position. (R. 85, 102, 133, 165.) See orig-

[25]In August, 1939, appellee furnished the Commission with full information concerning the number of acre-feet of oil sand under each of its leases in the field. (R. 123.)

inab maps of the field introduced in evidence, appellee's Exhibits Nos. 1 (offered, R. 74), 2 (offered, R. 75), 3 (offered, R. 76) and 4 (offered, R. 77). As we have shown, it is unable currently to obtain its fair share of the oil unless it is permitted to produce approximately in proportion to its oil in place. This is because of the average position occupied in the field by its leases. A fuller discussion of this fact is found on pages 46, 47, and footnote 12.

Under the June order appellee was permitted to produce only 9.932% of the current allowable, while under the September and January orders it was permitted to produce only 11.17% thereof. (R. 142, 143, 582.) It lacked about 22,800 barrels per day of producing its fair share under the June order, and about 21,600 barrels per day of producing its fair share under the September and January orders. (R. 143.) *The Commission's order of September* 11, 1939 (appellee's Exhibit 8, R. 473, 474; offered, 138), *recites that, in order for each producing well to be allowed to produce its fair share of the allowable, and in order to prevent waste, the method of allocation used must incorporate the factors of potential, acre-feet of oil sand, and bottom-hole pressure.* The June order for the East Texas Field does not incorporate any of these factors, except that potential is used in allocating about 2% of the field allowable among wells (Admitted, appellants' brief, pages 32, 35); and the same is true of the order now in effect. Ninety-eight per cent of the allowable is allocated on an arbitrary per-well basis. *It follows that, according to the Commission's own findings, the*

order of June 19 and the current order are necessarily arbitrary and do not make a proper allocation among properties in the field, and are not designed to prevent physical waste.

(3) *Likewise, the finding of the trial court that the orders complained of if continued in effect will cause appellee to suffer confiscation in the future, is fully borne out by the record.* Moore testified that if orders similar to the September and January orders were continued in effect during the remaining life of the field, appellee would lose between 45,000,000 and 85,000,000 barrels of oil by drainage from its leases to other properties in the field. (R. 145.) He further testified that his estimates were based upon actual calculations which he believed to be correct.[26] (R. 145.) Hudnall admitted that reliable estimates of this kind could be made, and that he had not made them. (R. 418.) Most of appellee's leases are in the west half of the field and in the fairway; the eastern portion of the field being 40 to 80 feet higher than the highest point in the fairway (R. 416), should be the last to quit producing. (R. 113, 114, 130, 131, 163,

[26]From Moore's testimony (R. 194)it clearly appears that he did not estimate appellee's future losses by drainage on the basis stated by appellants on page 45 of their brief. The subtractions of 11.17% of estimated future recovery from 14.3% thereof would indicate 100,000,000 barrels loss by drainage from appellee's properties. Mr. Moore testified that he made detailed calculations in arriving at the estimate of from 45,000,000 to 85,000,000 barrels net loss by drainage from appellee's leases, and that some leases would recover less than the oil in place, while others would recover more. (R. 145, 206, 207.) In making these calculations, he necessarily had to consider each lease separately, its position on structure, the effect of water encroachment, drilling density, and the time factor.

186, 195, 206.) . The water drive will continue to push the oil from the west and the fairway to the east. (R. 91, 391, 576.) Appellee's leases in the east half of the field being much less densely drilled on the average than leases of other operators in that portion of the field, a 75% or 98% per-well order would necessarily cause drainage from appellee's properties. (R. 163.) The pressures in the eastern portion of the field, other than the portion having tight sands, have been substantially maintained. (R. 347, 380.) Only a small strip of about 500 feet wide along the eastern side has tight sands. (R. 113, 114, 128, 206, 417.) This is a very insignificant portion of the field. Appellants admit in footnote No. 29 on page 60 of their brief that to a certain extent the leases located in the eastern portion of the field where sands are thick and permeable have a structural advantage. They argue for a structural advantage when it will benefit the east side but against it when they say it will benefit the fairway. It is undisputed that under the orders complained of in proportion to reserves in place, the east side will get the lion's share of production. (R. 163.) *The maintenance of a disproportionately high production for the extreme eastern portion of the field tends to cause waste by tending to lower pressures.* (R. 380, 381, 382.)

Furthermore, as we have pointed out, the high per-well allowable to wells on densely drilled tracts with small quantities of oil in place makes it impossible, in view of the restricted field allowable, for appellee's wells to receive sufficient allowable to enable appellee

to recover appellee's fair share either currently or ultimately.

(4) *The Court found that appellee has drilled on its properties more than enough wells to enable it to produce its fair share of the oil without waste.* (R. 565.) This finding is not challenged by an assignment of error or by testimony. The record shows that one well will effectually drain 10 acres in the East Texas Field, except, perhaps, in the narrow strip on the east side where the sands are tight. (R. 177, 178, 264.) Appellee has drilled its properties down to an average density of 5.8 acres per well (R. 85) and has drilled sufficient wells on each of its leases to recover the oil thereon without waste. (R. 146.) Appellants suggest on page 66 of their brief that appellee should drill more wells if it desires to obtain more production.[27] The court found (R. 585) and the record

[27] Appellants' brief, p. 66, footnote 34, asserts that waste would be prevented if appellee would drill more wellls, citing a statement by Hudnall. (R. 415, 416.) Hudnall admitted that his statement was based on the assumption that "the more wells you drill, the more oil you will get out." (R. 415.) Appellee's leases are already drilled to an average of 5.8 acres per well. (R. 585.) The restrictive provisions of the spacing rule are that wells shall be at least 660 feet from other wells and at least 330 feet from property lines (R. 551, offered R. 460), which contemplates not more than one well to ten acres. There is no suggestion in the record that reservoir conditions under appellee's leases are such as render the Commission's well spacing rule less applicable to appellee's leases than to the field generally. Clearly, Hudnall's assumption was on the theory that the restrictive provisions of the Commission's spacing rule are unwise in their general application, and that enforcement of the rule, in general, causes waste, and violation of the spacing rule, in general, prevents waste. The statutory basis for the well spacing rule is Articles 6014 and 6029, Vernon's Ann. Tex. Civ. Stats., 1925, empowering the Commission to adopt rules to prevent waste. Stanolind Oil and Gas Co. v. Midas Oil Co. et al., 123 S. W.

shows (R. 164) that if more wells were drilled there would be no certainty that appellee's position would improve. Furthermore, it costs about $10,000.00 to drill and equip a well in the East Texas Field. (R. 171, 585.) To require appellee to drill additional unnecessary wells would within itself be confiscatory. (R. 587.)

Thus, the past, present and future confiscatory ef-

(2d) 911, 915 (writ of error dismissed). In adopting the 660-330 foot spacing provisions for the field, the Commission expressly found that such restrictions are necessary to prevent waste. (R. 520, offered R. 467.) The spacing rule is not subject to collateral attack. Magnolia Petroleum Co v. Railroad Commission, 128 Tex. 189, 195, 93 S. W. (2d) 273. Hudnall's assumption on this point is a collateral attack on the wisdom of the spacing rule, and may not be considered. Railroad Commission v. Marathon Oil Co., 89 S. W. (2d) 517, 518 (writ of error refused); Atlantic Oil Production Co. v. Railroad Commission et al., 85 S. W. (2d) 655, 657 (writ dismissed). There are many other Texas authorities to the same effect. While the Commission once entered an order (R. 554, 557, offered R. 460) containing a recital that the Commission finds the more wells that are drilled, the greater will be the ultimate recovery, the Commission shortly thereafter issued two subsequent orders explaining that what it meant by the preceding statement was not that the closer wells are drilled, the greater will be the ultimate recovery, but only that the more wells that are drilled *in conformity with the spacing rules*, the greater will be the ultimate recovery. (R. 527, 536, offered R. 526, 535.)

The Commission denied permits to drill approximately 600 locations in the field as exceptions to the spacing rule, between January 1, 1938, and January 30, 1939. The Commission also denied 14 of appellee's applications for permits to drill additional wells on its properties in the field between September 21, 1938, and March 1, 1939. (Plaintiff's Exhibit 33, sent to this Court in its original form, offered R. 462, 463.) When such denials of permits are considered in connection with the fact that the Commission has granted numerous permits to drill several wells on many small tracts, it is obvious that the Commission is capricious in granting and denying permits in the field, and does not believe that such wells are necessary to prevent waste.

fect of the orders as to appellee has been clearly demonstrated.

4. Allowable of Twenty Barrels Per Well Arbitrary and Not Necessary.

The inherent and continuing vice in the orders, which inevitably leads to the discrimination, confiscation and unreasonableness complained of is the use of the base allowable of 20 barrels per well. As we have shown, it consumes 98% of the field allowable under the June order and the present order, and about 75% of the field allowable under the September and January orders. (R. 162, 580, 582.) In view of the restricted top allowable for the field, so much of the field allowable is consumed after the arbitrary 20-barrel allocation is made, that an insufficient quantity of proratable oil is left available for distribution among the better properties in the field to enable appellee to obtain its fair share of the oil. As Judge Sibley remarked from the bench, the 20-barrel allowable is the "snag in the stream." (R. 269.) The differences in the allowables for the various wells are not in any sense commensurate with the differences in potentials, pressures, acreage, sand thickness and oil in place with respect to the various tracts in the field. (R. 139, 141, 162, 379.)

The basic allowable of twenty barrels per day is given to each non-marginal well in the field regardless of the lack of uniformity in density of drilling all over the field. Because of this fact, the densely drilled tracts are favored over the less densely drilled

tracts similarly situated in all parts of the field. Densely drilled tracts must inevitably recover, oftentimes, far in excess of the equivalent of the oil in place under them, while many other tracts less densely drilled can never recover their fair share. Appellee's properties, although already having more wells than are needed to produce efficiently the oil in place (R. 146, 585), are less densely drilled on the basis of surface acreage (R. 85), and much less densely drilled on the basis of oil in place, than is the field as a whole. (R. 50, 185, 578, 585.) Its leases in the east half of the field, for example, are drilled to an average density of one well to 6.18 surface acres, while other operators in the east half of the field have drilled their leases to an average density of one well to 4.66 acres. (R. 163.) *While appellee owns* 14.3% *of the oil in place, it has only* 9.8% *of the wells in the field.* Hence, under the orders complained of, appellee is not permitted to take oil from its properties ratably with other operators. (R. 171.)

The use of the twenty-barrel base allowable per well per day is purely arbitrary.[28] (R. 583.) The Court stated:

> "We now hold that with the wide differences in well density and in well capacity that exists in the East Texas Field, an apportionment of three-fourths on a flat per well basis is not justified by good reason—is unreasonable." (R. 567.)

[28] Appellants state on page 51 of their brief that appellee has recommended a minimum allowable. This is incorrect. Appellee stated that it *would not object* to a reasonable minimum unit allowable. (R. 336.) An unreasonable basic *well-allowable* is quite a different thing.

It is allocated to each non-marginal well in the field simply because it is a well. (R. 139, 141, 580, 582.) It does not take into consideration the oil in place underlying the tract on which the wells are located as compared with the oil in place underlying other tracts. (R. 162, 379.) It does not take into consideration the acreage in one tract as compared with another or the difference in potential or pressures in the wells. (R. 162, 379.) It does not consider the time element or the position of wells on structure. (R. 162.) It gives to a well on the east side of the field exactly the same base allowable as it does to a well on the west side of the field or in the fairway, although the well on the east side of the field is on the highest part of the structure and will produce many years longer than will the wells on the west side of the field. (R. 114, 141, 163, 186, 195, 206.) It takes no account of the fact that, in order to produce his fair share of the oil, one operator must produce at a more rapid rate than another operator. It does not give consideration to the fact that an operator in the western portion of the field must produce his oil in a shorter time than an operator in the eastern part of the field if the former is to recover the oil in place, or its equivalent, under his lease; nor does it take into account the fact that one operator has thick sands and much oil in place while another operator has thin sands and little oil in place. Nor does it give one ounce of consideration to the fact that a well drilled on five acres in any part of the field must be permitted to produce more rapidly than a well drilled on an adjoining tract of 1/10 of an

acre if each is to be afforded a reasonable opportunity to recover the equivalent of the oil in place under the tract on which it is drilled. It brings the wells on the best property down to the level of the wells on the worst, and raises the wells on the worst property to the level of the best.

With respect to the June order, the Court found (R. 581):

> "Such allocation gave no separate consideration to acreage, sand thickness, bottom-hole pressure, position on structure, the number of acre-feet of oil sand in a lease, or the recoverable reserves under a lease."

With respect to the September and January orders, the Court not only found that the use of the twenty-barrel base allowable per well was arbitrary, but proceeded to show wherein and why such use was arbitrary. (R. 583, 584.)

The use of the twenty-barrel base allowable is not necessary in order to prevent waste. In fact, it bears no relation to the prevention of physical waste. The trial court so found. (R. 585.) The evidence in support of this finding is without real conflict in the record. Moore, Sorenson and Buck testified that there was no relation between the use of the twenty-barrel minimum and the prevention of waste. (R. 129, 180, 269.) Buck testified that, in view of the varying densities to which the wells in the field were drilled, the allocation of production by the use of the arbitrary twenty barrels per well tended to cause waste rather than to prevent it. (R. 262, 264, 269.)

The evidence further shows that, so far as the prevention of waste is concerned, it is not necessary to operate the wells which produce large quantities of water. (R. 264, 265.) In fact, it would be better, so far as the utilization of the reservoir energy is concerned, that they be not operated, because excessive production of water will tend to lower the reservoir pressure and waste the reservoir energy. (R. 265.) If wells producing excessive quantities of water are plugged and abandoned, the oil, with insignificant exceptions, which otherwise could be produced through them will be driven up-structure and produced through other wells. (R. 264, 265.)

The record further shows that, by use of the twenty-barrel base allowable per well, withdrawals in the eastern portion of the field are excessive. This excessive rate of withdrawal tends unduly to lower the pressure in that portion of the field, and this tends to cause waste. (R. 380, 381, 382.)

The maintenance of the base allowable of twenty barrels per well is not necessary in order to enable wells in the field to operate. Mr. Rowan testified that a pumping well can be operated at a profit on as low as five barrels per well per day. (R. 227, 230.) There are only about 6788 pumping wells in the field. (R. 392.) *The record shows that many pumping wells in the field have been operated over a period of years while producing an average of less than five barrels per day.* (R. 228, 443.) Presumably, they operated at a profit. *Up until the January order, they were subjected to the normal shutdown program.* (R. 443.) Nowhere in the record is there evidence which even

indicated that a pumping well must have an allowable of more than ten barrels a day in order to be operated. There is testimony to the effect that pumping wells producing large quantities of water cannot be operated at a profit on less than ten barrels per day. (R. 435, 438.) However, these wells are relatively few in number. (R. 438.) If they were permitted to produce ten barrels per day, or even twenty barrels per day, they would consume only a small portion of the field allowable. If it were conceded that wells producing great quantities of water should be permitted to produce as much as ten barrels per day, this does not justify the use of a twenty-barrel base allowable even for such wells, nor does it begin to justify the assignment of a base allowable of twenty barrels per day to other wells producing only small quantities of water, much less to pumping wells generally and to the approximately 19,000 flowing wells in the field. This is clearly a case of the tail wagging the dog!

The field has been fully developed, and it is not necessary to drill additional wells in order to produce the oil. (R. 177, 178, 179, 264.) Nearly all of the wells in the field have been drilled for more than two years (R. 443); and wells which have been drilled for more than two years should be paid out. (R. 443.) Therefore, it is not necessary, except perhaps in a few rare instances, that wells have an allowable sufficient to repay an investment.

It is not necessary that the base allocation of twenty barrels per well be made in order that wells on small tracts may be operated. We think that this fact has been demonstrated in the discussion immediately pre-

ceding this paragraph. Appellants seem to think, however, that not only should the owner of a small tract be permitted to drill on his tract, but that he should have some vested right, by use of the twenty-barrel base allowable, to drain oil from his neighbors while his neighbors are being held down.

In the first place, it has never been necessary that even one well be drilled on every small tract in the field. It would have been possible, by pooling arrangements, to have drilled on a much wider pattern. (R. 200.) By pooling arrangements, wells could have been drilled on a ten-acre pattern contemplated by Rule 37.[20] *The fact is that the Commission has not limited drilling to one well for each small tract.* As shown by appellee's Exhibit 16 (R. 507, offered 153), there are some 835 small tracts in the field having less than two acres each, with an average of almost three wells per tract. This has been fully discussed on pages 91, 92 and 93, above. No reason at all is shown why the Commission should capriciously issue permits for numerous additional wells on each small tract. Such action could not possibly justify allowing to the additional wells on such small tracts a base allowable of twenty

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[20]There is little doubt that pooling of small tracts could have been accomplished. See Walker, *The Problem of the Small Tract under Proration Regulations* (1938), 17 Tex. Law Rev. 157; and Summers, *Does the Regulation of Oil Production Require the Denial of Due Process and the Equal Protection of the Laws?*, a paper read before the Section of Mineral Law (A. B. A.) at its Philadelphia meeting, 1940, Veasy, *Compulsory Pooling of Adjacent Tracts into Drilling Units to Conform to an Established Well Spacing Plan*, also a paper read before the Section at its Cleveland meeting, 1938, copies of which have been filed with the librarian of the Supreme Court Library. [illegible] and supporting texts.)

barrels per day and an aggregate allowable unconscionably high. *Brown v. Humble Oil & Refining Company.* Mr. Hudnall, one of the witnesses for appellants, admitted that the allowable of twenty barrels per well is so high as to encourage additional drilling (R. 435), and that he could not defend such an allowable. (R. 431.) Mr. Buck testified that dense drilling, whether on small tracts or large tracts, tends to cause waste by bringing about excessive localized withdrawals and causing an uneven rise of the water table. (R. 262.) The Court made a finding to the same effect. (R. 585.)

The use of the base allowable of twenty barrels per well is not necessary in order to enable leases in the western and eastern portions of the field to recover the equivalent of the oil in place under them. This base allowable obviously was not designed to compensate any part of the field for structural disadvantages, for it was given to all non-marginal wells in all parts of the field, irrespective of structural position. It is, therefore, fitting that the Court should inspect searchingly appellants' assertion in their brief that the twenty-barrel base allowable is necessary, accidentally it seems, in order to compensate both the east and west sides simultaneously for structural differences!

On pages 58-61 of their brief, appellants argue that wells in the eastern one-third of the field should be permitted to produce 20 barrels per day, because they say that wells in that area will have a shorter life. This argument runs counter to appellants' pleadings, for there they admitted "migration of oil from the west

side to the east side of the field," both past and future. (R. 58.) They also stated:

> "*It is fair and proper that leases* in the center of the field and *on the east side* thereof *shall produce at the present time oil in a smaller proportion than the percentage of the acre-feet of saturated oil sand beneath such leases, for the reason that such leases* in the center of the field and *on the east side* thereof *will produce a much longer period of time* than leases or wells located in the western portion of the field." (R. 57, italics ours.)

Such argument also wholly ignores the physical facts and the testimony of all of the witnesses who testified on the subject.

In order to avoid confusion of thought, it is necessary to remember that tight sands occur only in a marginal band, for the most part only about 500 feet wide along the eastern edge of the field. (R. 113, 114, 130, 131, 206.) When appellants speak of the area in which there is material loss of pressure or in which a gas cap may form, they are really speaking of the small strip along the eastern margin and in the southeast portion of the field. Areas in the east third of the field immediately west of this marginal band have very permeable sands ranging from 10 to 30 feet thick. (R. 114, 428.) Water pushes the oil up structure. The east third is the highest portion of the field. (R. 257, 416.) The western portion of the field, then the fairway, then the eastern portion of the field (except the narrow marginal band) will be flooded by water in order. Sorenson so testified. (R. 113, 114, 130, 131.) Moore testified the same way. (R. 206.)

Dr. Patten did likewise. He stated that if pressures in the field decreased substantially to such an extent that gas would come out of solution, he thought that a gas cap would form along the *east edge* of the field and that the effect would be to push *some oil slightly down structure.* (R. 359.) His reference to the east edge of the field clearly refers only to the marginal band mentioned above. On cross-examination, Mr. Hudnall admitted that the east was favored under the orders, and that tracts on the east side would ultimately recover far in excess of the oil originally in place under them. (R. 439, 444, 445.) He also testified that when the Rowan & Nichols lease in the fairway is abandoned (a date which he fixed at 50 to 75 years hence, if the water table continues to rise at the present rate, R. 395), 90% of the field will have been abandoned due to water flooding and only an additional 5% will have been abandoned on the east side due to low pressures. (R. 393, 394.) The effect of his testimony is that the east-side abandonments due to low pressures or to encroachment of a gas cap will amount, over a long period of time, to only about 5% of the present field area. Thus all of the witnesses agree that nearly all of the east third will produce after the west third and the fairway are abandoned.

While the record shows that some 163 wells have been abandoned on the east side (R. 391), the probabilities are that very few additional abandonments on the east side will occur in the near future. (R. 113, 114, 130, 131, 206.) The field has been producing for nine years and the east side properties have as much oil under them as they had in the beginning. The water

drive is continuing to push oil from the west and from the fairway to the east. (R. 195.) Appellants would apparently have the Court believe that the migration of oil from west to east stops in the fairway. (Brief, p. 57.) As we have shown, all of the witnesses who testified on the subject, stated the contrary.

It is recognized that wells on the west side of the field, where the water is encroaching, should be permitted to produce at a more rapid rate than wells in the eastern portion of the field. (R. 271, 272.) The west-side wells will be drowned out in a relatively short time, while the wells in the eastern portion of the field will be drowned out last. (R. 114.) The time element works against the wells on the west side and in the fairway, and in favor of the wells on the east side of the field. (R. 195, 271, 272.)

The only possible justification for the base allowable of twenty barrels daily to wells in the western portion of the field is the allocation of twenty barrels daily to wells in the eastern portion of the field. This allocation to wells in the east steps up the drainage from west to east. If the allowable for east-side wells and properties were reduced to a proper figure, there would no longer be any reason for maintaining the base allowable of twenty barrels for wells on the west.

The undisputed evidence shows that the sands in the fairway are from ten to one hundred times thicker than they are on the west and east sides, whereas under the September and January orders the spread in allowables is from slightly over twenty barrels to slightly under fifty barrels per well (R. 198), although the average wells in the fairway produce around 35

barrels per day. (R. 406.) There is practically no spread at all under the June order and the order now in force. How can the average well in the fairway which is permitted to produce only slightly more oil per day than the average well in the eastern portion of the field currently or ultimately recover from ten to one hundred times more oil than a well on the east side, as it must do if it is permitted to produce its fair share? Not even a magician could bring about such a result![30]

It necessarily follows that the properties in the eastern portions of the field in particular, not only currently but ultimately, will obtain far in excess of their fair shares of the oil. (R. 177, 444, 445.) The effect of the orders is to hold the fairway properties down in order that the oil may migrate from the west and the fairway to replenish the east as it is produced. (R. 176, 177.)

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[30]Mr. Hart, in cross-examining Mr. Moore, brought out the fact that as the water table rises, the west will be flooded out first, the fairway second, and the east last (R. 195); and that the water table is rising more rapidly under the fairway than under any other portion of the field. This indicates depletion of the fairway properties at a more rapid rate than other properties in the field are being depleted. The drainage to the east is accentuated by the use of the base allowable of 20 barrels per well. (R. 164, 177, 179, 202, 205, 258, 270, 282, 318.) Hudnall, on cross-examination, admitted that the east side of the field is being produced too fast, and that east-side pressures would be increased if the allowable per well in the eastern portion of the field were reduced. (R. 423, 424, 428.) *He also admitted that the east-side properties are being favored under the orders complained of, and that he could not defend the 20-barrel base allowable.* (R. 431, 432.) *On cross-examination, he admitted that under the orders complained of, leases on the east side would recover many times the quantity of oil in place under them, and that this oil would be drained principally from the fairway.* (R. 444, 445.)

Appellants' brief, p. 70, states in reference to the plan of proration set forth in the September and January orders, that it permits a recovery by each section of the field of substantially its reserves as nearly as this result can be practically achieved. It cites three portions of the record, none of which by any stretch of the imagination supports the statement. Furthermore, as already stated, since this appeal was perfected the Commission has again put in force the plan of proration contained in the June order, which in no wise considers structural position. This was done in the very face of their findings in the September order that no order can be fair unless it considers structural position, and further in the face of the testimony of their own witness, Hudnall (R. 399), that any formula which does not consider the time element can not possibly give to each lease what it has in place under it.

The base allowable of twenty barrels per well is not justified on the ground that the so-called better wells can not be reduced below the allowable accorded to the few wells producing great quantities of salt water. Appellants say that the twenty barrels per well is granted to the flowing wells and to pumping wells not producing large quantities of water, because the "Commission feels that it would be unreasonable to reduce better wells below the amount granted to poor wells." No member of the Commission testified, and the reasons they had in mind are unexplained in the record. The statement concerning the way the Commission "feels" is not a statement of fact in the record, but is

purely argument. No such "feeling" on the part of the Commission can possibly justify the creation by the per-well allowable of the discrimination in favor of densely drilled tracts over the less densely drilled tracts *in all parts of the field,* which results solely from the per-well factor. In order to eliminate an assumed inequality as between a poor well on the edge and a good well on a small tract in the center, it is not reasonable to discriminate between appellee's le 3 densely drilled leases in favor of the small tracts similarly situated. One inequality cannot be justified by creating a greater one. If the Commission were consistent, the "feeling" which causes it to raise the allowable of a well on a small tract to a point *above* its fair share should not be pursued to the point of cutting appellee's allowable to a point *below* it fair share.

It cannot be said that the methods of allocation used in the orders complained of are the only available methods. While it is realized that it is not the function of the Court, but rather that of the Commission, to determine upon the method of allocation to be employed, nevertheless, the method used must not be discriminatory, confiscatory or unreasonable unless necessary in order to prevent physical waste. It is a striking fact that if the factors used in prorating 25% of the allowable under the orders of September and January were applied to all of the field allowable, appellee's percentage of the field allowable would be almost exactly equal to its percentage of the oil in place in the field. (R. 164-165, 583.) *Buck testified*

that if the method of allocation employed in prorating 25% of the field allowable were used generally, the several properties in the field would be permitted to produce very closely in proportion to the oil in place under them. (R. 270.) Each property owner in the field owns the oil in place under his land and is entitled to a reasonable opportunity to produce it. *If the formula used were applied to all instead of to 25% of the production, it would come very near to achieving this end.* (R. 270.)

It should be emphasized that the sciences of petroleum engineering and petroleum geology have long since passed beyond the "horse and buggy" stage. (R. 82, 83, 84, 107), *Brown v. Humble Oil & Refining Company.* Well logs and electric logs are available for hundreds of wells in the field. (R. 93.) From the data obtained in such logs, the thickness of the total oil section can be determined and the amount of shale and other impervious matter can be ascertained. From samples of cores and cuttings taken the porosity, permeability, and amount of connate water can be determined. From these data, the amount of pore space between the grains of the oil sands can be calculated. In this way, the amount of what is called the net effective oil sand can be ascertained. (R. 82, 83.)

The Railroad Commission estimated 4,961,546 acre-feet, the appellee estimated 4,976,020 acre-feet (R. 192), and Buck estimated 4,990,350 acre-feet (R. 248) of effective oil sand in the East Texas Field originally. While all witnesses agreed that there was a possible margin of error in estimating reserves (R. 169), *the*

record shows without dispute that any possible error would apply to the field as a whole to the extent that it applied to a particular lease, and that the relative amount of oil in place in the field as a whole and under the several leases could be ascertained almost free from error. (R. 169, 883.) According to appellants' witnesses, in the business world estimates are made and leases are bought, mortgaged, and sold on the basis of such estimates. (R. 376, 429, 430.) Hudnall said that they were reasonably accurate. (R. 430.)

The Commission has made no serious effort to utilize the engineering and geologic information available to it, or the technical knowledge at its command, in drafting its proration orders for the East Texas Field. The available engineering and technical knowledge is such that by use of such factors as potentials, bottom-hole pressure, sand thickness and acreage, even with a reasonably small well minimum of five barrels or less, in a proper way, the Commission could come much nearer affording to each operator, including appellee, an opportunity to produce his fair share of the oil. By doing this the Commission could bring about ratable withdrawals all over the field and better utilize the reservoir energy and thereby prevent waste. (R. 585.)

This is said only for the purpose of showing the Court that the task before the Commission is not a difficult or impossible one. While no order could be written that could give to each operator his share exactly, the Commission could prorate the allowable production among the operators in the field in such man-

ner as to give to each approximately his fair share of the oil, if it really were to make a serious effort to do so. (R. 170, 263, 270.)

From the foregoing facts, the conclusion seems inescapable that the orders complained of as to appellee are wholly unreasonable. They deprive it of a reasonable opportunity to recover its fair share of the oil, both currently and ultimately: We have shown that the orders are not necessary in order to prevent waste, but that on the contrary the method of allocation employed tends to cause waste. Regardless of the view which the Court may take with respect to the constitutional questions involved, there is no reasonable doubt that the orders complained of as to appellee violate the provisions of the Texas statutes which require that allocation must be made on a reasonable basis, and that, consequently, the injunction was properly granted.

VI.

Appellee used due diligence and exhausted its administrative remedy.

Over a period of years, appellee has protested against the system of proration maintained by the Railroad Commission for the East Texas Field. (R. 518.) On June 16, 1939, appellee filed with the Railroad Commission its written protest against the method then employed by the Railroad Commission in prorating the East Texas Field, that method being the

same method embraced in the proration order of June 19, 1939. (R. 515-519.)

The Railroad Commission issued its order of September 11, 1939, prorating the allowable production in the East Texas Field, being one of the orders complained of in this action. On the day the order was entered, appellee protested against its entry on the ground, among other things, that it would not afford to appellee an opportunity to produce its fair share of oil from the field. (R. 337.) The order of September 29, 1939, was entered and, as shown above, it was substantially the same as the September 11th order. By its action, the Commission refused to grant appellee's request for an adjustment of its allowable. Appellee's supplemental complaint in this action was filed October 3, 1939. (R. 41.) The order of January 24, 1940, being essentially the same as the order of September 11th, was later entered (R. 138), and the case was tried on its merits on February 13-16, 1940. (R. 570.) Thus, it will be seen that the repeated efforts of appellee to obtain relief from the Railroad Commission were futile, and it was compelled to file and prosecute this suit.

As was said in the *Brown* case, the real remedy to which appellee is entitled is an adjustment of its allowable. *Brown v. Humble Oil & Refining Company*, 126 Tex. 296, 312.

CONCLUSION

For the reasons stated above it is respectfully submitted that the judgment of the District Court for the Western District of Texas should be affirmed.

Respectfully submitted,

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APPENDIX
RAILROAD COMMISSION OF TEXAS
OIL AND GAS DIVISION

OIL AND GAS DOCKET NOS. 108, 120, 123, 124, 125, 126, 128, 129, 132 and 146 #20-1841

IN RE: CONSERVATION AND PREVENTION OF WASTE OF CRUDE PETROLEUM AND NATURAL GAS IN THE STATE OF TEXAS.

Austin, Texas
August 28, 1940

Special Order Fixing the Allowable Production of Crude Oil in the Various Fields and Districts in Texas.

WHEREAS, After due notice, hearings have been held in Austin, Texas, at various times, including the hearing on August 1, 1940, with respect to the existence and imminence of waste of oil and gas in the State of Texas, and the prevention thereof; and

WHEREAS, In view of the evidence, including among other matters the physical conditions in the various fields, the transportation and marketing facilities, the reasonable market demand, the reasonableness of the allocation as between fields of the allowable production under previous orders; and

WHEREAS, The Railroad Commission of Texas finds from the evidence that the reasonable market demand for oil produced in this State from the various fields and districts therein equals the amount hereinafter shown as the allowable production thereof during the period beginning 7 a. m., September 1, 1940, until 7 a. m., December 1, 1940, and

WHEREAS, The Railroad Commission of Texas finds that waste exists and is imminent and that to prevent such waste of oil and gas as the same is de-

fined by the applicable statutes, it is necessary to restrict the production of oil in the State of Texas to the reasonable market demand:

* * *

RULE 23. (2) THEREFORE, IT IS FURTHER ORDERED By the Railroad Commission of Texas that during each twenty-four (24) hour period beginning at 7 a. m., Central Standard Time, July 7, 1940, the owner or operator or manager of each well in the EAST TEXAS FIELD shall be permitted, either collectively or individually, to produce daily from each well a maximum of TWO AND THIRTY-TWO HUNDREDTHS PER CENT (2.32%) of its hourly potential capacity as determined by the commission.

PROVIDED FURTHER That all wells which would not receive as much as 20 barrels per day when limited to a maximum of 2.32% of their hourly potential capacity shall be entitled to produce 20 barrels per day if such wells are capable of producing this amount of oil.

This order shall become effective September 1, 1940, at 7 a. m, and shall remain in full force and effect until 7 a. m., December 1, 1940, unless modified, changed or amended by due order of the commission.

* * *

IT IS FURTHER ORDERED That this cause be held open on the docket for such other and further orders as may be necessary and supported by evidence of record.

RAILROAD COMMISSION OF TEXAS
LON A. SMITH, *Chairman*
ERNEST O. THOMPSON,
JERRY SADLER, *Commissioners.*

(SEAL)
ATTEST: C. F. PETET, *Secretary.*

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SUPREME COURT OF THE UNITED STATES.

No. 57.—October Term, 1940.

Railroad Commission of Texas and Lon A. Smith, Ernest O. Thompson, et al., etc., Appellants.
vs.
Humble Oil and Refining Company.

Appeal from the District Court of the United States for the Western District of Texas.

[January 6, 1941.]

Mr. Justice Frankfurter delivered the opinion of the Court.

This case is a companion case to No. 218, *Railroad Commission* v. *Rowan & Nichols Oil Company*, decided this day. There are minor variations in the facts of the two cases, but not of sufficient moment to call for particularization. The decision in the *Rowan & Nichols* case is decisive of this.

The decree is vacated and the case is remanded to the district court for dismissal of the complaint.

So ordered.

The Chief Justice, Mr. Justice McReynolds and Mr. Justice Roberts dissent.

A true copy.

Test:

Clerk, Supreme Court, U. S.